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Division Bench

BEFORE THE HONOURABLE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 318 /2005

PETITIONER

Sukhuram Karma @ Sukkuram Karma, S/o Late Dhurwa, aged about 71 years. Ex-Chairman, Tribal Co-operative Marketing Society "MARYADIT" Dantewada, Village Poospal, Tahsil Dantewada, District South Bastar, Dantewada, (C.G.).

P.R. No. 296/05
Presented by Shri Anil Tiwari
dated 25-01-05

VERSUS

RESPONDENTS

1. The Registrar, Co-operative Societies Chhattisgarh State; D.K.S. Bhawan Raipur, (C.G.).

2. The Assistant Registrar, Co-operative Societies District South Bastar, Dantewada; Dantewada (C.G.).

25/01/05

WRIT PETITION UNDER ARTICLE 226 R/W ARTICLE 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI, MANDAMUS, PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, ORDER OR ORDERS, DIRECTION OR DIRECTIONS:

HIGH COURT OF CHHATTISGARH AT BILASPUR
(FULL BENCH)

CORAM : Hon'ble Shri S. R. Nayak, CJ,
Hon'ble Shri Vijay Kumar Shrivastava, J &
Hon'ble Shri Dilip Raosaheb Deshmukh, J

Writ Petition No.2881 of 2005

&

10 other writ petitions

Petitioner Mohd. Akbar

Versus

Respondents State of Chhattisgarh & Another

ORDER OF THE COURT

(Passed on 19th December, 2006)

In view of the opinion of the majority, we uphold the constitutional validity of the impugned Amendment Act No.22 of 2004 and dismiss all the writ petitions, however, with no order as to costs. The Registrar of Co-operative Societies, State of Chhattisgarh, Raipur, is directed to hold election to the concerned Co-operative Societies within a period of six months from today, as directed by Vijay Kumar Shrivastava, J, in his order.

Sd/-
Chief Justice
19-12-2006

Sd/-
V.K. Shrivastava
Judge
19-12-2006

Sd/-
Dilip Raosaheb Deshmukh
Judge
19-12-2006

Gowri/Subbu

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR
(FULL BENCH)

CORAM : HON'BLE SHRI S.R. NAYAK, C.J.
HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J
HON'BLE SHRI D.R. DESHMUKH, J.

WRIT PETITION NO. 2881 OF 2005

&

10 other writ petitions.

PETITIONER Mohd. Akbar

Versus

RESPONDENTS State of Chhattisgarh and another

ORDER
(Passed on 19th December, 2006)

Per **S.R. NAYAK, CJ**

I have had the opportunity of reading the draft judgments prepared by Vijay Kumar Shrivastava, J and Dilip Raosaheb Deshmukh, J in these writ petitions. The conclusions reached by Dilip Raosaheb Deshmukh, J, with respect, are not acceptable to me. I agree with Vijay Kumar Shrivastava, J .

(2) In the result, I dismiss all the writ petitions with no order as to costs. The Registrar of Co-operative Societies, State of Chhattisgarh, Raipur is directed to hold elections to the Co-operative Societies concerned within a period of six months from today as directed by Vijay Kumar Shrivastava, J in his order.

Sd/-
CHIEF JUSTICE
19-12-2006

A.F.R.

GO

HIGH COURT OF CHHATTISGARH AT BILASPUR

FULL BENCH : Hon'ble Shri **S. R. Nayak, Chief Justice &**
Hon'ble Shri **Vijay Kumar Shrivastava**
Hon'ble Shri **Dilip Raosaheb Deshmukh, JJ.**

Writ Petition No.2881 of 2005

PETITIONER : Mohd. Akbar, Aged about 49 years, S/o Shri Mohd. Rashid President/Chairman Jila Sahkari Kendriya Bank Maryadit, Raipur R/O K.K.Road, Mahdhapara, Raipur, District Raipur (Chhattisgarh)

Versus

RESPONDENTS : 1. State of Chhattisgarh, Through the Secretary, Department of Cooperation, D.K.S.Bhawan, Mantralaya, District Raipur (Chhattisgarh)

: 2. Registrar, Cooperative Societies, Chhattisgarh, Raipur (Chhattisgarh).

Writ Petition No.4377 of 2004

PETITIONER : Uma Shankar Shukla, Chairman, Jagdalpur Sahakari Vipanan Sanstha Maryadit Avam Kisan Rice Mill, Jagdalpur. A Co-operative Society incorporated under provisions of Chhattisgarh Co-operative Societies Act, 1960 bearing Registration No. DR/BTR/5 Dated 15/12/1959

Versus

RESPONDENTS : 1. State of Chhattisgarh, Through the Secretary, Department of Agricultural & Cooperative, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)

: 2. Registrar, Cooperative Societies, Chhattisgarh, Agricultural University Campus, Labhandi, Raipur (Chhattisgarh).

Writ Petition No.318 of 2005

PETITIONER : Sukhuram Karma @ Sukkuram Karma, S/o Late Dhurwa, aged about 71 years, Ex-Chairman, Tribal Co-operative Marketing Society "MARYADIT" Dantewada, Village Poospal, Tahsil Dantewada, District South Bastar, Dantewada (C.G.)

Versus

RESPONDENTS : 1. The Registrar, Co-operative Societies Chhattisgarh State, D.K.S.Bhawan, Raipur (C.G.)

: 2. The Assistant Registrar, Co-operative Societies District South Bastar, Dantewada; Dantewada (C.G.).

Writ Petition No.1662 of 2005

PETITIONER : Sahkari Vipnan Sanstha Maryadit, Kawardha, through Ajit Chandrawanshi, aged about 33 years, S/o Shri Jagdish Chandrawanshi, Chairman, Sahakari Vipnan Sanstha Maryadit, Kawardha, District Kabirdham.

Versus

RESPONDENTS : 1. State of Chhattisgarh, Through Secretary, Department of Cooperative, Principal Secretary, D.K.S.Bhawan, Mantralaya, Raipur (Chhattisgarh)

: 2. Registrar, Cooperative Societies, State of Chhattisgarh, Raipur (Chhattisgarh).

: 3. Collector, Kawardha District Kabirdham.

: 4. Manager (Vyasthapak) Sahakari Vipnan Sanstha Maryadit, Mandi Compound, Kawardha District Kabirdham.

: 5. Deputy Registrar, Cooperative Society, Kawardha, Distt. Kabirdham.

Writ Petition No.3580 of 2004

PETITIONER : Damru Dhar Yadav, Aged about 48 years, S/o Late Shri Buddhu Ram Yadav, Chairman, Jila Sahakari, Krishi Aur Gramin Vikash Bank Maryadit, Raigarh (Chhattisgarh)

Versus

RESPONDENTS : 1. State of Chhattisgarh, Through the Secretary, Department of Cooperation, D.K.S.Bhawan, Mantralaya, District Raipur (Chhattisgarh)

: 2. Registrar, Cooperative Societies, State of Chhattisgarh, Raipur (Chhattisgarh)

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: 3. Collector, Raigarh District, Raigarh (Chhattisgarh) and appointed prescribed authority for the Jila Sahkari Krishi Aur Gramin Vikas Bank Maryadit, Raigarh.

: 4. Jila Sahkari Krishi Aur Gramin Vikas Bank Maryadit, Raigarh (Chhattisgarh)

: 5. Deputy Registrar, Cooperative Societies, Opposite Bunkar Sangh, Raigarh (Chhattisgarh)

Writ Petition No.4340 of 2005

PETITIONER : Mohan Lal Patel, Aged about 56 years, S/O Late Shri Uday Ram Patel, Chairman, Vipnan Sahkari Samiti Maryadit, Balod, District Durg (Chhattisgarh)

Versus

RESPONDENTS : 1. State of Chhattisgarh, Through the Secretary, Department of Cooperative, D.K.S.Bhawan, Mantralaya, District Raipur (Chhattisgarh)

: 2. Registrar, Cooperative Societies, State of Chhattisgarh, Raipur (Chhattisgarh).

: 3. Joint Registrar, Cooperative Societies, State of Chhattisgarh, Raipur (Chhattisgarh)

: 4. Deputy Registrar, Vipnan Sahkari Samiti Maryadit, Balod, District Durg (Chhattisgarh)

: 5. Jila Sahkari Vipnan Sahkari Samiti Maryadit, Balod, District Durg (Chhattisgarh)

Writ Petition No.4953 of 2005

PETITIONER : Parmanand S/o Laxmi Prasad Patel, aged about 54 years Ex Chairman of the Superceded Vipanan Sahakari Samiti Maryadit, Sarangarh P.S. & Tehsil Sarangarh, Distt.: Raigarh (C.G.)

Versus

RESPONDENTS : 1. State of Chhattisgarh, Through the Secretary, Department of Cooperative, D.K.S.Bhawan, Mantralaya, District Raipur (Chhattisgarh)

: 2. Registrar, Cooperative Society, State of Chhattisgarh, Raipur.

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3. Joint Registrar, Cooperative Society, State of Chhattisgarh, Raipur (C.G.)

4. Dy. Registrar, Co-operative Societies, Raigarh (C.G.)

Writ Petition No.5479 of 2005

PETITIONER : Rohit Kumar Sahu S/o Chaitram Shahu, Aged about 34 Years Chairman, Vipnan Sahkari Samiti Maryadit, Bemetara, Tahsil Bemetara, distt. Durg.

Versus

RESPONDENTS : 1. State of Chhattisgarh, Through the Secretary, Department of Cooperative, D.K.S.Bhawan, Mantralaya, District Raipur (Chhattisgarh)

: 2. Registrar, Cooperative Societies, State of Chhattisgarh, Raipur (Chhattisgarh).

: 3. Joint Registrar, Cooperative Societies, State of Chhattisgarh, Raipur (Chhattisgarh)

: 4. Dy. Registrar, Vipnan Sahkari Samiti Maryadit, Bemitra, Dist. Durg (Chhattisgarh)

: 5. Jila Sahkari Vipnan Sahkari Samiti Maryadit, Bemitra, District Durg (Chhattisgarh)

Writ Petition No.6135 of 2005

PETITIONERS : 1. Ganga Ram Sinha S/o Mulachand, Occupation – President of Gramin Sewa Sahakari Samiti sarkara aged about 55 R/o Sarkara, P.S. Vithydeehi, Dist. Mahasamund (C.G.)

: 2. Veer Singh S/o Pratap Singh aged about 60 years Occupation-President of Gramin Sewa Sahkari Samiti Sonasilly, R/o Village Sonasilly Dist. Mahasamund.

: 3. Battish Ram Thakur S/o Narayan aged about 65 years occupation – President Gramin Sewa Sahkai Samiti Badhipali Mahasamund, Dist. Mahasamund.

Versus

RESPONDENTS : 1. The State of Chhattisgarh, Through the

Secretary, Department of Cooperative, D.K.S.Bhawan, Mantralaya, Raipur (C.G.)

: 2. Registrar, Cooperative Society, State of Chhattisgarh, Dist. Raipur (C.G.).

: 3. Joint Registrar, Cooperative Society, Raipur (C.G.)

: 4. Dy. Registrar, Vipnan Sahkari Samiti Maryadit Mahasamund Dist. Mahasamund Chhattisgarh.

: 5. Mahasamund Sahkari Vipnan Awam Prakirya Samiti Mahasamund, Dist. Mahasamund (C.G.)

Writ Petition No.626 of 2006

PETITIONER : BABURAM CHANDEL S/o Late Shri Pilaram Chandel, aged 53 years, Jatadharra. P.O. Barhapur Tahsil Dhambha District Durg (C.G.)

Versus

RESPONDENTS : 1. The State of Chhattisgarh, Through the Secretary, Department of Co-operative, D.K.S.Bhawan, Mantralaya, District Raipur (Chhattisgarh)

: 2. Registrar, Cooperative Societies, State of Chhattisgarh, Raipur (C.G.).

3. Deputy Registrar (Co-operative Societies), Durg, District Durg (Chhattisgarh)

4. Sahkari Vipnan Sahkari Samiti Maryadit, Dhamdha, District Durg (C.G.)

Writ Petition No.3269 of 2004

PETITIONER : Mohan Lal Patel, Aged about 56 years, S/O Late Shri Uday Ram Patel, Chairman, Jila Sahkari, Krishi Aur Gramin Vikas Bank Maryadit, Durg, A cooperative society registered under the provisions of the Chhattisgarh Cooperative Societies Act, 1960

Versus

RESPONDENTS : 1. State of Chhattisgarh, Through the Secretary, Department of Cooperative, D.K.S.Bhawan, Mantralaya, District Raipur (Chhattisgarh)

: 2. Registrar, Cooperative Societies, State of

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Chhattisgarh, Raipur (Chhattisgarh).

: 3. Collector, Durg District Durg (Chhattisgarh) and appointed prescribed authority for the Jila Sahkari Bhumi Vikas Bank Maryadit, Durg.

: 4. Jila Sahkari Krishi Aur Gramin Vikas Bank Maryadit, Durg (Chhattisgarh)

: Deputy Registrar, Cooperative Society, Opposite Bunkar Sangh, Durg (Chhattisgarh)

PRESENT:

Shri Kanak Tiwari, learned Sr. Counsel with Shri Prateek Sharma, learned counsel for the petitioners in W.Ps. No.3580 of 2004, 1662 of 2005, 2881 of 2005, 4340 of 2005 and 3269 of 2004.

Shri Manindra Shrivastava, learned Sr. Counsel with Shri Amrito Das, learned Counsel for the petitioner in W.P.no.4377 of 2004.

Shri Rahul Jha, learned Counsel for the petitioner in W.P.318 of 2005.

Shri S.N.Nande, learned counsel for the petitioner W.P.No.4953 of 2005
Shri Sanjay K. Agrawal, learned counsel for the petitioner in W.P.No.5479 of 2005.

Smt. Renu Kochar, learned counsel for the petitioner in W.P.No.6135 of 2005

Shri R.S.Shrivastava, learned counsel for the petitioner in W.P.No.626 of 2006.

Shri Ravish Chandra Agrawal, learned Advocate General and Shri Prashant Mishra, learned Additional Advocate General with Shri Utkarsh Verma, learned Dy. Govt. Advocate for the State of Chhattisgarh.

Shri Rajeev Shrivastava, learned counsel for the Zila Sahakari Krishi Aur Gramin Vikas Bank Maryadit, Raigarh.

ORDER

(Passed on 19th December, 2006)

Per Vijay Kumar Shrivastava, J.

I have had an opportunity to read the draft order prepared by my learned Brother Dilip Raosaheb Deshmukh, J. Having perused the same

with due consideration, I regret my inability to agree with the opinion of Deshmukh, J. Hence, this separate opinion of mine.

Constitutional validity of the Chhattisgarh Co-operative Societies (Amendment) Act, 2004 (No.22 of 2004) has been assailed in all these petitions. For brevity the amendment provided therein is reproduced below :

> **"Amendment of Section 49.**— In Section 49 of the Chhattisgarh Co-operative Societies Act, 1960 (No.17 of 1961) (hereinafter referred to as the Principal Act) :-
> (1) Sub-section (7AA) and (7AAA) shall be omitted.
> (2) Sub-section (8) (i) and (ii) the following shall be substituted.
> "(8) If the elections are not held before the expiry of the term specified in sub-section (7A) or the extended term under deleted herein before sub-section (7AA), all the members of the committee shall be deemed to have vacated their seats and the powers of the committee shall be deemed to have been vested in the Registrar and the Registrar shall hold elections as early as possible:
> Provided that the Registrar may authorize any officer to exercise the powers of the committee vested in him under this sub-section and the officer so authorized shall exercise such powers from the date of such authorization."

History :-

The M.P. Cooperative Societies Act, 1960 (henceforth "the Act, 1960") has come into force on 15th day of May, 1962 and the law has been enacted with the following objects and reasons :

> "At present different laws on Co-operatives are in force in the constituent units of the new State of Madhya Pradesh. In order to have one uniform law for the whole State and with a view to strengthening and developing the Co-operative Movement and to extend the assistance by the State including State partnership, wherever necessary, it has been felt that a new law on Co-operation may be enacted."

Further, vide amendment Act No.12 of 1994, the objects of the Act, 1960 was substituted as below :

(47)

"An Act to organize and develop co-operatives as democratic instruments and people's institutions based on self help, and mutual aid and for curbing exploitation and ensuring socio-economic development of people with particular emphasis on weaker sections of society."

The Act, 1960 was amended from time to time, but the purpose of the Act, 1960 remains to organize and develop co-operative as an effective democratic instrument for curtailing exploitation and ensuring socio-economic justice to people's with particular emphasis on weaker sections.

Section 49 has a pivot role in the Act, 1960. Section 49 of the original Act is reproduced as below :

"**49. Annual General Meeting.**—(1) A general meeting of a society shall be held at least once in a year for the purpose of—
(a) approval of the programme of the activities of the society prepared by the committee for the ensuing year;
(b) election, if any, in the prescribed manner of the members of the committee;
(c) consideration of the audit report and the annual report;
(d) disposal of the net profits; and
(e) consideration of any other matter which may be brought forward in accordance with the bye-laws.
(2) Notice of such meeting shall be sent to the Assistant Registrar of the District in which the society is situate, at least fourteen clear days before the date of the meeting.
(3) The Assistant Registrar may himself attend such meeting or depute any officer subordinate to him to attend it.
(4) The Assistant Registrar or the officer deputed by him, shall have the right to address the meeting in respect of any matter pertaining to the subjects specified in clauses (a),(c), (d) and (e) of sub-section (1)."

To achieve democratic objectives the aforesaid provision was amended from time to time and its journey appears to go long way.

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Vide Amendment Act No.8 of 1970 :-

"**Amendment of Section 49.**—In section 49 of the Principal Act,--

(a) For sub-section (1) the following sub-section shall be substituted, namely :--

'(1) Every society shall within a period of twelve months from the date of last annual general meeting call a general meeting of its members for the purpose of—

(a) approval of the programme of the activities of the society prepared by the committee for the ensuing year :

(b) election, if fallen due in the prescribed manner of the members of the committee ;

Explanation :-- Election of the committee shall be deemed to have fallen due, if the term of the committee according to its bye-laws comes to an end within a period of three months from the date of the annual general meeting or if an election has otherwise fallen due according to rules or bye-laws ;

(c) consideration of the audit report, if received and the annual report ;

(d) disposal of the net profit ;

(e) consideration of any other matter which may be brought forward in accordance with the bye-laws ; and

(f) to elect delegates, if any, for representing the society in other societies :

Provided that the Registrar may, extend the period for holding such meeting by a further period not exceeding three months.';

(b) after sub-section (4), the following sub-section shall be added, namely :--

'(5) If default is made in calling general meeting within the period prescribed therefor under sub-section (1) or in complying with the requirement of sub-section (1), the Registrar may, by order, declare any officer whose duty it was to call such meeting or comply with the provisions of sub-section (1) and who without reasonable excuse failed to comply with any of the provisions of aforesaid sub-section, to be disqualified for being elected or being in office for such period not exceeding three years, as he may specify in such order and if the officer is an employee of the society impose a penalty on him of any amount not exceeding five hundred rupees :

Provided that no order shall be made under the sub-section unless the person concerned is given a reasonable opportunity of being heard."

(49)

Vide Amendment Act No.14 of 1976 :-

"**Amendment of Section 49.**—In section 49 of the Principal Act, --

(i) for clause (f) of sub-section (1) the following clause shall be substituted, namely :--

'(f) presenting the budget for the next co-operative year,' and

(ii) after sub-section (5), the following sub-section shall be inserted, namely :--

'(6) If the bye-laws of a society provides for election of all or some members of the committee on territorial basis, such members of the committee shall be elected from the area in a meeting of the members of that area in accordance with the provisions of the bye-laws in a date prayer to that of general meeting. The results thereof shall be affixed on the notice board of the society and also at the place of the general meeting prayer to the commencement of the proceedings in annual general meeting.

(7) At every annual general meeting of a society, the committee shall lay before the society a statement showing details of loans or advances, if any, outstanding during the preceding years, in the name of the members of the committee, their family members and near relations.

Explanation.—For the purpose of sub-section (7), family members and near relations shall include wife, husband, father, mother, brother, sister, son, daughter, father's father, father's brother, father's sister, mother's father, mother's brother or sister, father's brother, son or daughter, father's sister, son or daughter, mother's brother's son or daughter, mother's sister's son or daughter, brother's son or daughter, son's wife, daughter's husband, son's son, daughter, daughter's son or daughter, wife's father or mother, wife's brother or sister, wife's sister's son or daughter, husband's brother, husband's brother's wife, husband's brother's son or daughter.

(8) It shall be obligatory on the outgoing committee of a society to hold elections of the incoming committee prior to the period prescribed in its bye-laws. If the committee fails to conduct elections and has not handed over charge on the date prescribed in the bye-laws, all the members of the committee shall be deemed to have vacated their seats and the

Registrar shall assume charge till the next elections are held and the new committee takes over charge."

Vide Amendment Act No.5 of 1978 :-

"**Amendment of section 49.**—In Section 49 of the Principal Act,--

(i) in sub-section (1),--

(a) after clause (f), the following clause shall be inserted, namely :--

'(g) election of delegates, if any, for representing the society in other societies;

(b) for the existing proviso, the following proviso shall be substituted, namely :--

'Provided that the Registrar may save the meeting in which elections are to be held on expiration of the term of the committee specified in sub-section (7-A) extend the period for holding such meeting, by a further period not exceeding three months.';

'(ii) after sub-section (7), the following sub-sections shall be inserted, namely :--

'(7-A) Notwithstanding anything contained in this Act or the rules made thereunder or the bye-laws of a society,--

(i) the term of the committee.

(ii) the term of the delegate elected under clause (g) of sub-section (1) shall be three years from the date of the annual general meeting or special general meeting, as the case may be, of the society in which the election is held :

Provided that with a view to constitute committees so as to bring uniformity in term of committees of any class of society the State Government may, by general order, direct that the term of committee in office shall expire on the date specified in the order :

Provided further that the foregoing proviso shall cease to have effect on the 24th, November, 1978.

(7-B) On issue of an order under the first proviso to sub-section (7-A), the Registrar shall appoint a person or persons to manage the affairs of the society till the new elections are held and the committee takes charge. The new elections shall be held as early as possible and in any case within a period of one year from the date of the said order.

(7-C) The provisions of sub-sections (4), (5) and (6) of section 53 shall apply to the person or persons appointed under sub-section (7-B) as they apply to the person or persons appointed under that section.';

(iii) for sub-section (8), the following sub-section shall be substituted, namely;--

'(8) It shall be obligatory on the out going committee of society to hold elections of the incoming committing prior to the expiration of the term specified in sub-section (7-A). If the committee fails to conduct elections and has not handed over charge on expiration of the term specified in sub-section (7-A), all the members of the committee shall be deemed to have vacated their seats and the Registrar shall assume charge till the next elections are held and the new committee takes over charge.".

Vide Amendment Act No.7 of 1979 :-

"**Amendment of Section 49.**—In sub-section 7-B of section 49 of the Madhya Pradesh Co-operative Societies Act, 1960 (No.17 of 1961) for the words "in any case within a period of one year from the date of the said order" the words and figures "in any case by the 31st December, 1979" shall be substituted."

Vide Amendment Act No.5 of 1980 :-

"**Amendment of Section 49.**—In sub-section (7-B) of section 49 of the Madhya Pradesh Co-operative Societies Act, 1960 (No.17 of 1961), for the words and figures "in any case by the 30th June 1980", the words and figures "in any case by the 31st December, 1980", shall be substituted and shall be deemed to have been substituted with effect from the 12th April, 1979."

Vide Amendments Act No.3 of 1982 & No.28 of 1982 :-

"**Amendment of Section 49.**—In section 49 of the Madhya Pradesh Co-operative Societies Act, 1960 (No.17 of 1961),--

(a) after sub-section (7-A), the following sub-section shall be inserted, namely :--

'(7-AA) The State Government may, by notification, for reasons to be stated therein, extend the term of—

(i) the Committee of a society or class of societies ; or

(ii) the delegate elected under clause (g) of sub-section (1), as specified in sub-section (7-A), from time to time, for a total period not exceeding one year.';

(b) for sub-section (8), the following sub-section shall be substituted, namely :--

(8) It shall be obligatory on the outgoing of society to hold elections of the incoming committee prior to

the expiration of the term specified in sub-section (7-A) or extended term under sub-section (7-AA). If the Committee fails to conduct elections and has not handed over charge on expiration of the term specified in sub-section (7-A) or extended term under sub-section (7-AA), all the members of the committee shall be deemed to have vacated their seats and the Registrar shall assume charge till the next elections are held and the new committee takes over charge."

"**Amendment of Section 49.**—In section 49 of the Principal Act,--

(a) in sub-section (7-A) for clauses (i) and (ii), the following clauses shall be substituted, namely :--

(i) the term of the committee shall be three years from the date of the annual general meeting or special general meeting, as the case may be, of the society in which the election is held :

(ii) the term of the delegate elected under clause (g) of sub-section (1) shall be co-terminus with the term of the committee of the society for which such delegate is elected;

(b) in sub-section (7-B) for the words and figures 'in any case by the 30th June 1982' the words and figures 'in any case by the 31st December 1983' shall be substituted."

Vide Amendment Act No.3 of 1985 :-

"**Amendment of Section 49.**—In section 49 of the Principal Act,--

(i) after sub-section (1), the following sub-section shall be inserted and shall be deemed to have been inserted with effect from the 1st January, 1983, namely;--

'(1A) the election of members of the Committee and delegates, if any, for representing the society in any other society shall be conducted by the Returning Officer.'

(ii) in sub-section (7-B) for the figures, letters and words '31st December, 1984', the figures, letters and words '30th June, 1985', shall be substituted."

Vide Amendment Act No.23 of 1986 :-

"**Amendment of Section 49.**—In section 49 of the Principal Act,

(a) in sub-sections (2), (3) and (4) for the words 'Assistant Registrar', the words "Deputy/Assistant Registrar', shall be substituted ;

(b) in sub-section (7) for the existing explanation the following explanation shall be substituted, namely :--

'*Explanation*.—For the purpose of sub-section (7), family members and near relations shall include wife, husband, father, mother, brother, sister, son, daughter, son-in-law, wife's brother, sister's husband, wife's sister, brother's wife and daughter-in-law.';

(c) for sub-section (8), the following sub-section shall be substituted, namely :--

'(8)(i) It shall be obligatory on the outgoing committee, of society to hold elections prior to the expiration of the term specified in sub-section (7-A) or extended term under sub-section (7-AA). The outgoing committee shall apply to the Registrar for appointment of a Returning Officer within a reasonable time which shall not be in any case less than three months before expiration of the term of committee ;

(ii) If the committee fails to hold elections and has not handed over charge on expiration of the term specified in sub-section (7-A) or extended term under sub-section (7-AA) to the Registrar or any officer authorized by him in this behalf, all the members of the committee shall be deemed to have vacated their seats and the Registrar shall assume charge and hold elections as early as possible."

Vide Amendment Act No.25 of 1988 :-

"**Amendment of Section 49.**—In section 49 of the Principal Act,--

(i) clause (g) of sub-section (1) shall be omitted;

(ii) for sub-section (1-A), the following sub-section shall be substituted, namely :--

(1-A) The election of members of the committee shall be conducted by the Returning Officer. Notwithstanding anything contained in this Act or rules framed thereunder or bye-laws of the society, election of the representatives shall be conducted by the committing from amongst themselves :

Provided that in case of resource society, where not less than half of the total number of members of such society belong to Scheduled Castes and Scheduled Tribes—

(a) for representation on resource societies, the representative shall be only from among the members of the committee belonging to such castes and tribes; and

(b) for representation of non-resource societies, the representative may be from among the members of the committee irrespective of his caste or tribe ;

(iii) in sub-section (5),--

(a) for the words "Five hundred Rupees", the words "Five thousand Rupees" shall be substituted :

(b) for the proviso, the following proviso shall be substituted, namely :--

'Provided that no order shall be made under this sub-section unless the person concerned is given a reasonable opportunity of being heard by an officer not below the rank of Joint Registrar of Co-operative Societies.' ;

(iv) in sub-section (7) for the existing explanation, the following explanation shall be substituted, namely :--

Explanation.—For the purpose of sub-section (7) family members shall include wife, husband and dependent children.';

(v) for sub-section (7-A), the following sub-section shall be substituted, namely ;--

'(7-A) (i) Unless otherwise provided hereinafter, the term of the Committee shall be five years from the date on which first meeting of the committee is held and shall continue in office till the expiry of the term specified ;

(ii) The term of the representative elected by the committee shall be co-terminus with the terms of the committee of the society in which such representative is elected :

Provided that where a committee superseded or suspended under Section 53 is re-instated as a result of any order of the court or appellate authority, the period during which the society remained under supersession or suspension, as the case may, shall be excluded in computing the period of one full term aforesaid.';

(vi) in sub-section (7-AA), for the words 'eighteen months', the words 'twenty four months', shall be substituted and shall be deemed to have been substituted with effect from the 7th May, 1988 ;

(vii) after sub-section (7-AA), the following sub-section shall be inserted namely :--

'(7-AAA) Notwithstanding the expiry of the maximum period eighteen months specified in sub-section (7-AA), in respect of the committees between the period commencing on the 7th May, 1988 (hereinafter referred to as the said date) and ending on the date of publication of the Madhya Pradesh Co-operative Societies (Amendment) Ordinance, 1988, in Gazette the period in respect of such Committees shall be deemed to have been extended for a period of six months with effect from the said date as if the notification for the

extension of the period were issued under sub-section (7-AA) on the said date.';

(viii) sub-section (7-B) and (7-C) shall be omitted ;

(ix) after clause (ii) of sub-section (8), the following proviso shall be inserted, namely :--

'provided that if the outgoing Committee of the Society has resolved and requested the Registrar to hold election at least three months in advance and the Registrar has failed to conduct the election on its request, the Registrar shall not assume charge of the Committee and the members of the Committee shall continue to hold the offices."

Vide Amendment Act No.14 of 1990 :-

"**Amendment of Section 49.**—In section 49 of the Principal Act,--

(i) for clause (b) of sub-section (1) the following clause shall be substituted, namely :--

'(b) election, if fallen due of the members of the committee including representatives.';

(ii) for sub-section (1-A), the following sub-section shall be substituted, namely :--

'(1-A) The election of the members of the Committee, Chairman, Vice-Chairman, President, Vide President and representatives, if any shall be conducted by the Returning Officer in the prescribed manner.';

(iii) for sub-section (7-A) the following sub-section shall be substituted, namely :--

'(7-A)(i)(a) Unless otherwise provided hereinafter, the term of the committee shall be three years from the date on which first meeting of the committee to elect its Chairman, Vice-Chairman, President or Vice-President is held and shall continue in office till the expiry of the term specified ;

(b) The term of a committee in office at the commencement of the Madhya Pradesh Co-operative Societies (Amendment) Act, 1990 shall be three years notwithstanding its election--

(i) for a period of three years under clause (i) of sub-section (7-A) as it stood immediately before the 28th June, 1988 ; or

(ii) for a period of five years under the said clause as it stood immediately before the 26th April, 1990.

(ii) the term of the representative shall be co-terminus with the term of the committee of the society by which such representative is elected;

(iii) Notwithstanding anything contained in this Act, with a view to constitute committees or general bodies so as to give effect to the provisions contained in clause (f) of section 19-A, sub-section (3), (4), (5-A), (7) and (8) of Section 48, Section 48-B, and Section 52-B in relation to any class of society, the State Government may by general order, direct that--

(a) the term of committee in office shall expire, or

(b) the election of delegates irrespective of whether their term has commenced or not shall stand cancelled on the date specified in the order ;

(iv) On the issue of an order under clause (iii), the Registrar shall appoint a person or persons to manage the affairs of the society till the new elections are held and the committee takes charge. The new elections shall be held –

(a) in case of the order passed before the commencement of the Madhya Pradesh Cooperative Societies (Amendment) Act, 1990 within six months from the date of such commencement; and

(b) in case of an order passed after such commencement, within six months from the date of such order.

(v) the provisions of sub-sections (4), (5) and (6) of Section 53 shall apply to the person or persons appointed under clause (iv) as they apply to the persons appointed under that section.';

(iv) for sub-section (7-AA), the following sub-section shall be substituted, namely :--

'(7-AA) The State Government may, by notification, for reasons to be stated therein, extend the term of the committee of a society or a class of societies from time to time, for a total period not exceeding twelve months.';

(v) for sub-section (8), the following sub-sections shall be substituted, namely :--

'(8) If the elections are not held before the expiration of the terms specified in sub-section (7-A) or the extended term under sub-section (7-AA), all the members of the committee shall be deemed to have vacated their seats and the powers of the committee shall be deemed to have vested in the Registrar and he shall hold elections as early as possible :

Provided that the Registrar may authorize any officer to exercise the powers of the committee vested in him under this sub-

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section and the officer so authorized shall exercise such powers from the date of such authorization.

(9) For removal of doubt it is hereby declared that the term of the committee continuing in office at the commencement of the Madhya Pradesh Cooperative Societies (Amendment) Act, 1990 by virtue of the first proviso to sub-section (8) as it stood immediately before such commencement, shall come to an end.

(10) On the commencement referred in sub-section (9) all the members shall be deemed to have vacated their seats and the powers of the committee shall be deemed to have vested in the Registrar and he shall hold elections as early as possible but within one month from such commencement :

Provided that the Registrar may authorize any officer to exercise the powers of the committee vested in him under this sub-section and the officer so authorized shall exercise such powers from the date of such authorization."

The provisions contained in Section 49(8) were annulled by High Court of Madhya Pradesh in the matter of **Anurudh Prasad Shastri vs. State of M.P.**[1].

Vide Amendment Act No.12 of 1994 :-

"**Amendment of Section 49.**—In section 49 of the Principal Act,--

(i) in sub-section (1), for clause (b) the following clause shall be substituted, namely :--

'(b) Election, if fallen due, of the members of the Committee.

Explanation.—Election of the committee shall be deemed to have fallen due, if the term of the committee comes to an end within a period of three months from the date of the annual general meeting.'

(ii) for sub-section (7-A), the following sub-section shall be substituted, namely :--

'7A(i) The term of the committee shall be five years from the date on which first meeting of the committee is held :

Provided that where a committee superseded, suspended or removed under the

[1] 1993 (2) MPJR 33

Act is reinstated as a result of any order of any court or authority, the period during which the committee remained under supersession, suspension out of office as the case may be, shall be excluded in computing the period of the term aforesaid.

(ii) The term of the representative elected by the committee of the society shall be co-terminus with the term of the committee of the society for which representative is elected :

Provided that the representative of a committee shall continue to hold his office till the expiry of the term of the committee of which he is a member.'

(iii) for sub-section (8) the following sub-section shall be substituted, namely :--

'(8)(i) It shall be obligatory on the out going committee of the society to hold elections prior to the expiration of the term under sub-section (7-A) or extended term under sub-section (7-AA). The outgoing committee shall apply to the Registrar for holding election within a reasonable time which shall not be in any case less than 90 days before expiration of the term of the committee :

Provided that if the outgoing committee has resolved and requested the Registrar to hold election atleast 90 days in advance and the Registrar has failed to conduct election on its request, the Registrar shall not assume charge of the committee and the members of the committee shall continue to hold the offices :

Provided further, that if the Registrar fails to conduct elections of the committee within 90 days from the date of expiry of the term of the committee, the committee of the society shall appoint Returning Officer who shall conduct the election of the committee within 180 days from the date of expiry of the term.

(ii) If the committee fails to hold election and has not handed over the charge on expiration of the term, under sub-section (7-A) or extended term under sub-section (7-AA) to the Registrar or any officer authorized by him on his behalf, all the members of the committee shall be deemed to have vacated their seats and the Registrar shall assume charge and hold elections as early as possible.'

(iv) for sub-section (9), the following sub-section shall be substituted, namely :--

'(9)(a) Every society shall record in the Minutes Book, the minutes of all the proceedings of

every general meeting and all other meetings of its committee.

(b) Such minutes shall be circulated to all the persons invited for the meeting, within 30 days from the conclusion of the meeting.

(c) The minutes so recorded shall be signed by the person who presided over the said meetings.'

(v) sub-section (10) shall be omitted."

Vide Amendment Act No.20 of 1999 :-

"**Amendment of Section 49.**—In section 49 of the Principal Act,--

(i) in sub-section (1), for the words "Every society shall within a period of twelve months, from the date of last annual general meeting call a general meeting of its members for the purpose of", the words "Every Society shall within three months before the close of financial year call a general meeting of its members for the following purposes of" shall be substituted;

(ii) After first proviso of sub-section (1), the following second proviso shall be inserted, namely :--

"Provided further that in respect of a society where an order of liquidation has been issued under Section 69, annual general meeting shall not be necessary to be called."

Vide Amendment Act No.20 of 2003 (enacted by the Chhattisgarh Legislature)

"**Amendment of Section 49.**—In section 49 of the Principal Act, in sub-section (7-AA), the word "Twenty, four" shall be substituted by the word "Thirty six."

From the above history, it is evident that to maintain democratic value the provision was amended from time to time and even when the Amendment Act No.14 of 1990, Section 49(8) was challenged in Court of law from where it was declared *ultra vires,* subsequently the law was validated by Amendment Act No.12 of 1994 and before the impugned amendment was made by the State of Chhattisgarh, the amended provisions of 1994 and subsequent amendments thereafter, were in force.

It is manifest that earlier, when Amendment Act No.25 of 1988 was not part of the statute, the committee was not authorized to hold offices till fresh election on default being on the part of Registrar to hold election.

Again after 1994 amendment, the Registrar's jurisdiction to hold office with some pre conditions has been restored. In earlier part, term for holding office by committee was not prescribed under the provisions of the Act, subsequently it was 3 (three) years and now it is 5 (five) years. Rules and bye-laws are also there, for proper management of the society and a complete scheme and procedure for holding meetings and elections have been led in rules and bye-laws.

The petitioners have challenged the impugned amendment on the ground that High Court of Madhya Pradesh in **Anurudh Prasad Shastri** (Supra[1]) has earlier in 1993 annulled the amendment, which the State of Chhattisgarh is introducing afresh by way of amendment, therefore, the Legislature of Chhattisgarh was incompetent as well stopped to reframe the law in that fashion, even otherwise, the impugned amendment is against the public policy, arbitrary, violative of Article 14 and against the spirit of the Constitution.

The M.P. Reorganization Act, 2000 (henceforth "the Act, 2000") was enforced on 1st day of November, 2000 and the Act, 2000 bifurcated erstwhile State of Madhya Pradesh in two States; (i) State of Madhya Pradesh; and (ii) State of Chhattisgarh. Accordingly, necessary amendments in Constitution regarding Representation in the Legislature have been made that enshrined in Part III of the Act, 2000. From 1st day of November, 2000, Chhattisgarh Legislative Assembly came into existence and it has unimpeachable power to legislate or amend the law. Even Section 79 of the Act, 2000, authorizes ample authority to the Government to amend the law by a competent legislature, which reads as below :

> "79. Power to adapt laws.—For the purpose of facilitating the application in relation to the State of Madhya Pradesh or Chhattisgarh of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent legislature of other competent authority."
> **Explanation.**—In this Section, the expression "appropriate Government" means as respects any law relating to a matter enumerated in the Union List, the Central Government, and as respects any other law in its application to a State, the State Government."

Petitioners placing reliance in judgments rendered by the Hon'ble Apex Court in the matters of **I.N. Saksena Vs. State of Madhya Pradesh**[2] and **M/s. Ujagar Prints and others (ii) Vs. Union of India and others**[3] urged that the impugned amendment brought by the State of Chhattisgarh was brought without following curative measures or neutralizing effect of the decision of High Court of Madhya Pradesh in the matter of **Anurudh Prasad Shastri** (Supra[1]). Therefore, the impugned amendment could not have been allowed to remain in the field of statute. On the other hand, State opposed the contention.

Hon'ble the Apex Court in the matter of **I.N. Saksena** (Supra[2]) has held as below :

> "While, in view of this distinction between legislative and judicial functions, the legislature cannot by a bare declaration, without more, directly overrule, reverse or override a judicial decision, it may, at any time in exercise of the plenary powers conferred on it by Articles 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law on a topic within its legislative field fundamentally altering or changing with retrospective, curative or neutralising effect the conditions on which such decision is based.

[2] (1976) 4 SCC 750
[3] (1989) 3 SCC 488

> The rendering ineffective of judgments or orders of competent courts and Tribunals by changing their basis by legislative enactment is a well-known pattern of all validating Acts. Such validating legislation which removes the causes for ineffectiveness or invalidity of actions or proceedings is not an encroachment on judicial power."

Hon'ble the Apex Court in the matter of **M/s Ujagar Prints** (Supra[3]) has held as below:

> "A competent legislature can always validate a law which has been declared by courts to be invalid, provided the infirmities and vitiating factors noticed in the declaratory judgment are removed or cured. Such a validating law can also be made retrospective. If in the light of such validating and curative exercise made by the legislature — granting legislative competence — the earlier judgment becomes irrelevant and unenforceable, that cannot be called an impermissible legislative overruling of the judicial decision. All that the legislature does is to usher in a valid law with retrospective effect in the light of which earlier judgment becomes irrelevant. Such legislative expedience of validation of laws is of particular significance and utility and is quite often applied, in taxing statutes. Courts, except under extraordinary circumstances, would be reluctant to override the legislative judgment as to the need for and wisdom of the retrospective legislation."

It is apparent that if a State legislature enacted a law and that was annulled by High Court of the same State, the same legislature had power to legislate validating statute by removing or curing the vitiating factor noticed by the Court. Here in the instant case, the legislature of Madhya Pradesh enacted amendment Act No. 14 of 1990 and the amendment contained in Section 49(8) of the Act was annulled by High Court of Madhya Pradesh by its judgment in the matter of **Anurudh Prasad Shastri** (Supra[1]). If a validating statute was required to be enacted, for that validating statute only Madhya Pradesh Legislature was competent and by no stretch of imagination it can be said that a legislature of Chhattisgarh that came into existence on 1-11-2000, which never was a

participant in legislation of amendment Act No.14 of 1990 can be asked to enact validating statute by removing or curing the vitiating factors noticed in the case of **Anurudh Prasad Shastri** (supra[1]). *The State Legislature of Chhattisgarh is competent to legislate the impugned amendment law by virtue of their Legislative competence, as well the power conferred on them vide Section 79 of the Act, 2000. They were not required to dwell inside the decision of* ***Anurudh Prasad Shastri*** *(supra[1]), even otherwise, the defect noticed by the Court was cured by statute enforced by State of Madhya Pradesh by amending Section 49 in the year 1994 by amendment Act No.12 of 1994.*

When the State of Chhattisgarh came into existence at that moment or thereafter neither proviso of sub-section (8) of Section 49 of the Act which reads "Provided that if the outgoing Committee of the Society has resolved and requested the Registrar to hold election at least three months in advance and the Registrar has failed to conduct the election on its request, the Registrar shall not assume charge of the Committee and the members of the Committee shall continue to hold the offices" , a rule just prior to amendment Act No.14 of 1990 was in force nor the same law which was, after annulment of relevant amendment by the Court , applicable up to enforcement of Amendment Act No.12 of 1994 was operative or existed. The Legislature of Chhattisgarh has amended the provisions of Section 49 of the Act in order to keep the democratic value alive, in accordance with their wisdom. Though it may be verbatim to that enshrined in amendment Act No.14 of 1990 which was annulled by the Court, yet the State Legislature of Chhattisgarh was competent to legislate it in the background of all the above existing factors.

Neither any legislative body can be defined to be successor of other legislative body nor it can be subservient of that. The State Legislature of Chhattisgarh came into existence on the appointed day i.e., 01-11-2000 and according to Constitution of India, from 01-11-2000 onwards the State Legislature of Chhattisgarh was quite independent sovereign body and was not bound by the actions of the State Legislature of erstwhile State of Madhya Pradesh.

Petitioners further relying on the judgment rendered by the Hon'ble Apex Court in the matter of **Rajendra Prasad Yadav Vs. State of Madhya Pradesh**[4] and also relying on the judgment of High Court of Madhya Pradesh rendered in the matter of **Anurudh Prasad Shastri** (supra[1]), have vehemently contended that the impugned amendment snatches the right of elected body and allowed the Registrar who is an official of the Government to be In-charge of the elected platform, that itself violates the fundamental right of the elected members and accordingly it is arbitrary and violative to article 14 of the Constitution of India. In oppugnation, counsel for the opposition contended that the State does not want to snatch the right of any of the elected body, but is inclined to give the platform to elected personal and not to those who have completed their term and in the garb of extension or staying the legislation are still continuing in the field, more than 3 – 4 years even after expiry of their term. They further contended that neither the Government nor the Registrar is interested to carry on the powers of the committees by themselves, but they wish that the elected body alone should be permitted

[4] AIR 1997 SC 3723

to sit over the platform and, therefore, they even curtailed their power which earlier was with the Government to extend the term.

In the case of **Rajendra Prasad Yadav** (supra[4]) judgment has been rendered by Hon'ble K. Ramaswamy & D.P. Wadhwa, JJ, but both the judges deferred on the question whether the liability of statutory vacation of offices is attracted on failure of Apex Bank to hold elections to the Board of Directors/Managing Committee within time. The same was the question involved in that judgment whereas in the instant case, that is not the question for consideration.

So far as **Anurudh Prasad Shastri** (supra[1]) is concerned, the provisions have been declared as *ultra vires* mainly on the two contentions. Firstly on the comparison with the earlier provisions in force prior to substitution by Amendment Act No.14 of 1990, which provides a provision that "if the outgoing committee of the society has resolved and requested the Registrar to hold election atleast three months in advance and Registrar has failed to conduct the election at its request, the Registrar shall not assume the charge of the committee and the members of the committee shall continue to hold the office". The above provision does not remain in the statute, vide amendment Act No.12 of 1994, it has been materially changed and now in case Registrar fails to conduct election and thereafter committee also could not able to complete election within scheduled time; the Registrar has been empowered to assume charge.

Here in the instant case, so far as the impugned amendment is concerned, the law that is applicable from 1994 onwards has to be compared, whereas when earlier amendment was brought by the State of

Madhya Pradesh vide amendment Act No.14 of 1990 for comparative value other legislation was there. In other words, when the amendment Act No.14 of 1990 was introduced and committees power to remain in the office was taken away, the law available for comparison was that if Registrar fails to hold election the committee was to continue the office till next election whereas when the impugned amendment has been introduced the position is quite different. The impugned amendment is to be compared with a law that speaks, Registrar shall hold an election and in his default committee has been empowered to hold election within 180 days and thereafter if a fresh body has not come into existence the Registrar by all means has to assume charge of the committee. Therefore, whether impugned amendment is in force or not, the Registrar has to assume charge of those bodies, which have not been substituted by afresh in accordance with law. Only impact of the impugned amendment is that the committee shall not continue the office after the term for a further period of 180 days.

Second ground was that the Registrar being an officer working under the Government headed by the political party, the possibility of that political party controlling society through the Registrar cannot be ruled out. While considering this aspect, the other side of the coin has not been considered. The other side is that if Registrar is not allowed to take charge of the committee, the earlier committee which has completed its term which has no *locus standi* to remain in the field will work and to allow such a favour, the Government headed by a particular political party may control those societies without there being any difference whether those committees belong to their parties or not and they may enjoy fruits of it by back door. Therefore, if we want to travel within the criteria of misuse,

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both the sides are maligning, therefore, when the State of Chhattisgarh itself has robbed its power and is allowing free hand to elect body, that cannot be questioned merely on the ground that Registrar who assumes charge to facilitate election will misuse his authority and destroy democratic value of the legislation.

The term of the committee is five years, that itself speaks of right of franchise. If after the term is over a group of persons who were earlier the elected persons was asked to hold the office that will clearly amount to disfranchise those who have valuable right to elect the members of the committee and to bring democratic set up in existence. No one, whether State or individual, has right to disfranchise a citizen from his valuable right by whatever means. The Registrar is a public servant and in case he fails to perform his duty to conduct the election as early as possible, there are ways open not only with the Government, but also by judicial forum, to dictate and direct him to conduct the election and hand over charge of elected platform to newly elected body. Neither Courts are helpless nor the Government or the citizen of India. If Registrar grabs the valuable right and power of the society/committee/or voters, he can be dealt with in accordance with law.

Vide Amendment Act No.3 of 1982 the provision of Section 49(7-AA) of the Act has been included and by its inclusion, State Government was wrapped with an authority to extend the term of the committee or a society or a class of society. Vide Amendment Act No.25 of 1988 provision (7-AAA) has been included in Section 49. The term of the committee i.e. five years and the voters to elect the member of the committee had cast their votes for a term of five years, but thereafter their

right to franchise has been materially impaired, because of the extension of the term of the committee's in vogue. They had right to elect a new body, but by those included provisions they could not elect new body and have to wait for years together and are at the mercy of the Government who, from time to time, extended the period of the committee. In fact, the act of the Government by extending the term of the committee during its existence has resulted betraying the voters and snatching their constitutional valid rights.

In democracy whenever a body is to be elected for a term soon after expiry of the term, the body seizes to function as it happens in Parliament, Assembly etc. Here also the term of committee i.e. the elected body is for a fixed term and in order to maintain the democratic value it is obligatory on the part of State to see that no committee should be allowed to remain in existence after its term. It is also obligatory on the part of Government to constitute fresh elected body who may assume charge of the outgoing body.

State Government vide impugned amendment has omitted the provision of Section 49 (7-AA) and (7-AAA) of the Act. No doubt, State Government has curtailed its power to extend the period of committee in order to maintain the democratic value and its act certainly is worth *appreciation*, therefore, by impugned amendment the decision of the State Government deleting provisions of (7-AA) and (7-AAA) of Section 49 of the Act, is not only constitutional, but it also commands the democratic value.

The Hon'ble Apex Court in the matter of **Bhandara District Central Co-operative Bank Ltd. and others vs. State of Maharashtra and**

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another[5] has held that Court cannot be called upon to embark on an enquiry into public policy or investigate into questions of political wisdom or even to pronounce upon motives of legislature in enacting law which is otherwise within its legislative competence.

Here in the instant case, it is as clear as crystal that following shall be the impact of the impugned amendment :

- After the term of five years, former members without being elected afresh, cannot hold the office again.
- Within five years the committee/society, by following law, rules and bye-laws should complete elections.
- The right of franchise available with the voters i.e. citizen of India shall remain intact and they will cast their votes in time as enshrined in the Act or to say their right to vote will not be robbed by the Government or the outgoing committee.
- The State Government in order to facilitate political motive is stopped from extending the period of committees at their choice and thereby restrained from misusing its power.
- The Registrar has a duty to hold election as early as possible, therefore, if he fails, for

[5] AIR 1993 SC 59

his misconduct, he can be taken to task by Government or the legal forum.

In nutshell, the impugned amendment has the effect of avoiding, management monopoly, unreasonably denying the opportunity to elected members from managing affairs of the society, withholding the right of franchise to member/voter. Further, it debars former elected members to continue next term without being elected afresh for the same. In true sense, in my opinion, the object of the impugned amendment in all honesty is to bring democratic functions of the society alive and which alone is the real object enshrined behind it.

In the result, the impugned amendment is neither arbitrary nor violative of Article 14 of the Constitution; therefore, the impugned amendment cannot be annulled or declared *ultra vires*. Accordingly, all the writ petitions are dismissed. However, it is ordered that the Registrar, Co-operative Societies shall, within six months from today, hold elections of all the bodies in accordance with law, rules and bye-laws who have completed their term and shall bring all those fresh elected bodies in to existence.

No costs.

Sd/- 19-12-06

(VIJAY KUMAR SHRIVASTAVA)
Judge
19/12/2006

Raju/Gowri

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.2881 of 2005

PETITIONER : Mohd. Akbar
Versus
RESPONDENTS : State of Chhattisgarh and another.

Writ Petition No.4377 of 2004

PETITIONER : Uma Shankar Shukla
Versus
RESPONDENTS : State of Chhattisgarh and another

Writ Petition No.318 of 2005

PETITIONER : Sukhuram Karma @ Sukkuram Karma
Versus
RESPONDENTS : The Registrar, Co-operative Societies Chhattisgarh State and another

Writ Petition No.1662 of 2005

PETITIONER : Sahkari Vipnan Sanstha Maryadit, Kawardha,
Versus
RESPONDENTS : State of Chhattisgarh and others.

Writ Petition No.3580 of 2004

PETITIONER : Damru Dhar Yadav
Versus
RESPONDENTS : State of Chhattisgarh and others.

Writ Petition No.4340 of 2005

PETITIONER : Mohan Lal Patel
Versus
RESPONDENTS : State of Chhattisgarh and others.

Writ Petition No.4953 of 2005

PETITIONER : Parmanand
Versus
RESPONDENTS : State of Chhattisgarh and others

Writ Petition No.5479 of 2005

PETITIONER : Rohit Kumar Sahu
Versus
RESPONDENTS : State of Chhattisgarh and others.

Writ Petition No.6135 of 2005

PETITIONERS : Ganga Ram Sinha and others.
versus
RESPONDENTS : The State of Chhattisgarh and others

Writ Petition No.626 of 2006

PETITIONER : BABURAM CHANDEL
Versus
RESPONDENTS : The State of Chhattisgarh and others.

Writ Petition No.3269 of 2004

PETITIONER : Mohan Lal Patel
Versus
RESPONDENTS : State of Chhattisgarh and others.

ORDER FOR CONSIDERATION

Judge
.12.2006

HON'BLE THE CHIEF JUSTICE

HON'BLE JUSTICE SHRI V. K. SHRIVASTAVA

Post for Order: .12.2006

Judge

A.F.R. (93)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Full Bench : Hon'ble Shri S. R. Nayak, Chief Justice &
Hon'ble Shri V. K. Shrivastava,
Hon'ble Shri Dilip Raosaheb Deshmukh, JJ.

Writ Petition No.2881 of 2005

PETITIONER : Mohd. Akbar, Aged about 49 years, S/o Shri Mohd. Rashid President/Chairman Jila Sahkari Kendriya Bank Maryadit, Raipur R/O K.K.Road, Mahdhapara, Raipur, District Raipur (Chhattisgarh)

Versus

RESPONDENTS : 1. State of Chhattisgarh, Through the Secretary, Department of Cooperation, D.K.S.Bhawan, Mantralaya, District Raipur (Chhattisgarh)

: 2. Registrar, Cooperative Societies, Chhattisgarh, Raipur (Chhattisgarh).

Writ Petition No.4377 of 2004

PETITIONER : Uma Shankar Shukla, Chairman, Jagdalpur Sahakari Vipanan Sanstha Maryadit Avam Kisan Rice Mill, Jagdalpur. A Co-operative Society incorporated under provisions of Chhattisgarh Co-operative Societies Act, 1960 bearing Registration No. DR/BTR/5 Dated 15/12/1959

Versus

RESPONDENTS : 1. State of Chhattisgarh, Through the Secretary, Department of Agricultural & Cooperative, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)

: 2. Registrar, Cooperative Societies, Chhattisgarh, Agricultural University

Campus, Labhandi, Raipur (Chhattisgarh).

Writ Petition No.318 of 2005

PETITIONER : Sukhuram Karma @ Sukkuram Karma, S/o Late Dhurwa, aged about 71 years, Ex-Chairman, Tribal Co-operative Marketing Society "MARYADIT" Dantewada, Village Poospal, Tahsil Dantewada, District South Bastar, Dantewada (C.G.)

Versus

RESPONDENTS : 1. The Registrar, Co-operative Societies Chhattisgarh State, D.K.S.Bhawan, Raipur (C.G.)

: 2. The Assistant Registrar, Co-operative Societies District South Bastar, Dantewada; Dantewada (C.G.).

Writ Petition No.1662 of 2005

PETITIONER : Sahkari Vipnan Sanstha Maryadit, Kawardha, through Ajit Chandrawanshi, aged about 33 years, S/o Shri Jagdish Chandrawanshi, Chairman, Sahakari Vipnan Sanstha Maryadit, Kawardha, District Kabirdham.

Versus

RESPONDENTS : 1. State of Chhattisgarh, Through Secretary, Department of Cooperative, Principal Secretary, D.K.S.Bhawan, Mantralaya, Raipur (Chhattisgarh)

: 2. Registrar, Cooperative Societies, State of Chhattisgarh, Raipur (Chhattisgarh).

: 3. Collector, Kawardha District Kabirdham.

: 4. Manager (Vyasthapak) Sahakari Vipnan Sanstha Maryadit, Mandi Compound, Kawardha District Kabirdham.

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: 5. Deputy Registrar, Cooperative Society, Kawardha, Distt. Kabirdham.

Writ Petition No.3580 of 2004

PETITIONER : Damru Dhar Yadav, Aged about 48 years, S/o Late Shri Buddhu Ram Yadav, Chairman, Jila Sahakari, Krishi Aur Gramin Vikash Bank Maryadit, Raigarh (Chhattisgarh)

Versus

RESPONDENTS : 1. State of Chhattisgarh, Through the Secretary, Department of Cooperation, D.K.S.Bhawan, Mantralaya, District Raipur (Chhattisgarh)

: 2. Registrar, Cooperative Societies, State of Chhattisgarh, Raipur (Chhattisgarh)

: 3. Collector, Raigarh District, Raigarh (Chhattisgarh) and appointed prescribed authority for the Jila Sahkari Krishi Aur Gramin Vikas Bank Maryadit, Raigarh.

: 4. Jila Sahkari Krishi Aur Gramin Vikas Bank Maryadit, Raigarh (Chhattisgarh)

: 5. Deputy Registrar, Cooperative Societies, Opposite Bunkar Sangh, Raigarh (Chhattisgarh)

Writ Petition No.4340 of 2005

PETITIONER : Mohan Lal Patel, Aged about 56 years, S/O Late Shri Uday Ram Patel, Chairman, Vipnan Sahkari Samiti Maryadit, Balod, District Durg (Chhattisgarh)

Versus

RESPONDENTS : 1. State of Chhattisgarh, Through the Secretary, Department of Cooperative, D.K.S.Bhawan, Mantralaya, District Raipur

(Chhattisgarh)

: 2. Registrar, Cooperative Societies, State of Chhattisgarh, Raipur (Chhattisgarh).

: 3. Joint Registrar, Cooperative Societies, State of Chhattisgarh, Raipur (Chhattisgarh)

: 4. Deputy Registrar, Vipnan Sahkari Samiti Maryadit, Balod, District Durg (Chhattisgarh)

: 5. Jila Sahkari Vipnan Sahkari Samiti Maryadit, Balod, District Durg (Chhattisgarh)

Writ Petition No.4953 of 2005

PETITIONER : Parmanand S/o Laxmi Prasad Patel, aged about 54 years Ex Chairman of the Superceded Vipanan Sahakari Samiti Maryadit, Sarangarh P.S. & Tehsil Sarangarh, Distt.: Raigarh (C.G.)

Versus

RESPONDENTS : 1. State of Chhattisgarh, Through the Secretary, Department of Cooperative, D.K.S.Bhawan, Mantralaya, District Raipur (Chhattisgarh)

: 2. Registrar, Cooperative Society, State of Chhattisgarh, Raipur.

3. Joint Registrar, Cooperative Society, State of Chhattisgarh, Raipur (C.G.)

4. Dy. Registrar, Co-operative Societies, Raigarh (C.G.)

Writ Petition No.5479 of 2005

PETITIONER : Rohit Kumar Sahu S/o Chaitram Shahu, Aged about 34 Years Chairman, Vipnan Sahkari Samiti Maryadit, Bemetara, Tahsil Bemetara, distt. Durg.

Versus

RESPONDENTS : 1. State of Chhattisgarh, Through the Secretary, Department of Cooperative, D.K.S.Bhawan, Mantralaya, District Raipur (Chhattisgarh)

: 2. Registrar, Cooperative Societies, State of Chhattisgarh, Raipur (Chhattisgarh).

: 3. Joint Registrar, Cooperative Societies, State of Chhattisgarh, Raipur (Chhattisgarh)

: 4. Dy. Registrar, Vipnan Sahkari Samiti Maryadit, Bemitra, Dist. Durg (Chhattisgarh)

: 5. Jila Sahkari Vipnan Sahkari Samiti Maryadit, Bemitra, District Durg (Chhattisgarh)

Writ Petition No.6135 of 2005

PETITIONERS : 1. Ganga Ram Sinha S/o Mulachand, Occupation - President of Gramin Sewa Sahakari Samiti sarkara aged about 55 R/o Sarkara, P.S. Vithydeehi, Dist. Mahasamund (C.G.)

: 2. Veer Singh S/o Pratap Singh aged about 60 years Occupation-President of Gramin Sewa Sahkari Samiti Sonasilly, R/o Village Sonasilly Dist. Mahasamund.

: 3. Battish Ram Thakur S/o Narayan aged about 65 years occupation - President Gramin Sewa Sahkai Samiti Badhipali Mahasamund, Dist. Mahasamund.

Versus

RESPONDENTS : 1. The State of Chhattisgarh, Through the Secretary, Department of Cooperative, D.K.S.Bhawan, Mantralaya, Raipur (C.G.)

: 2. Registrar, Cooperative Society, State of Chhattisgarh, Dist. Raipur (C.G.).

: 3. Joint Registrar, Cooperative Society, Raipur (C.G.)

: 4. Dy. Registrar, Vipnan Sahkari Samiti Maryadit Mahasamund Dist. Mahasamund Chhattisgarh.

: 5. Mahasamund Sahkari Vipnan Awam Prakirya Samiti Mahasamund, Dist. Mahasamund (C.G.)

Writ Petition No.626 of 2006

PETITIONER : BABURAM CHANDEL S/o Late Shri Pilaram Chandel, aged 53 years, Jatadharra. P.O. Barhapur Tahsil Dhambha District Durg (C.G.)

Versus

RESPONDENTS : 1. The State of Chhattisgarh, Through the Secretary, Department of Co-operative, D.K.S.Bhawan, Mantralaya, District Raipur (Chhattisgarh)

: 2. Registrar, Cooperative Societies, State of Chhattisgarh, Raipur (C.G.).

3. Deputy Registrar (Co-operative Societies), Durg, District Durg (Chhattisgarh)

4. Sahkari Vipnan Sahkari Samiti Maryadit, Dhamdha, District Durg (C.G.)

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Writ Petition No.3269 of 2004

PETITIONER : Mohan Lal Patel, Aged about 56 years, S/O Late Shri Uday Ram Patel, Chairman, Jila Sahkari, Krishi Aur Gramin Vikas Bank Maryadit, Durg, A cooperative society registered under the provisions of the Chhattisgarh Cooperative Societies Act, 1960

Versus

RESPONDENTS : 1. State of Chhattisgarh, Through the Secretary, Department of Cooperative, D.K.S.Bhawan, Mantralaya, District Raipur (Chhattisgarh)

: 2. Registrar, Cooperative Societies, State of Chhattisgarh, Raipur (Chhattisgarh).

: 3. Collector, Durg District Durg (Chhattisgarh) and appointed prescribed authority for the Jila Sahkari Bhumi Vikas Bank Maryadit, Durg.

: 4. Jila Sahkari Krishi Aur Gramin Vikas Bank Maryadit, Durg (Chhattisgarh)

: Deputy Registrar, Cooperative Society, Opposite Bunkar Sangh, Durg (Chhattisgarh)

Shri Kanak Tiwari, learned Sr. Counsel with Shri Prateek Sharma, learned counsel for the petitioners in W.Ps. No.3580 of 2004, 1662 of 2005, 2881 of 2005, 4340 of 2005 and 3269 of 2004.

Shri Manindra Shrivastava, learned Sr. Counsel with Shri Amrito Das, learned Counsel for the petitioner in W.P.no.4377 of 2004.

Shri Rahul Jha, learned Counsel for the petitioner in W.P.318 of 2005.

Shri S.N.Nande, learned counsel for the petitioner W.P.No.4953 of 2005

Shri Sanjay K. Agrawal, learned counsel for the petitioner in W.P.No.5479 of 2005.

Smt. Renu Kochar, learned counsel for the petitioner in W.P.No.6135 of 2005

Shri R.S.Shrivastava, learned counsel for the petitioner in W.P.No.626 of 2006.

Shri Ravish Chandra Agrawal, learned Advocate General and Shri Prashant Mishra, learned Additional Advocate General with Shri Utkarsh Verma, learned Dy. Govt. Advocate for the State of Chhattisgarh.

Shri Rajeev Shrivastava, learned counsel for the Zila Sahakari Krishi Aur Gramin Vikas Bank Maryadit, Raigarh.

ORDER

(Passed on 19 .12.2006)

The following order was passed by **Dilip Raosaheb Deshmukh, J.**

These writ petitions are being disposed of by this common Order as all these petitions raise a common question of law, for consideration of this Court.

2. Petitioners in all these petitions are elected Officers and members of Managing Committee of Primary and Central Co-operative Societies registered under the Chhattisgarh Co-operative Societies Act, 1960 (hereinafter referred to as the Act). The Managing Committee of all the petitioner societies had, in terms of Sec. 49(8)(i) of the Act (as it stood immediately prior to the impugned amendment) passed resolutions to hold new elections of the officers and members of the Managing Committees and requested the Registrar, Co-

operative Societies to hold elections. On failure of the Registrar to conduct elections within 90 days, as provided under the proviso to Section 8(i) of the Act and before the expiry of the period of 180 days during which an obligation was cast upon the Managing Committee of the societies to conduct elections by appointing a Returning Officer, the respondent State promulgated an Ordinance (No. 5 of 2004) called "The Chhattisgarh Co-operative Societies (Sanshodhan) Ordinance, 2004 published in the Chhattisgarh Rajpatra (Asadharan) dated 1st October, 2004 amending Section 49 which provided the term of the officers and members of the Managing Committees of registered societies in case elections were not held before the expiry of the term under Section 7(A) or the extended term under Section 7-AA, by deleting Section 7 (AA) and Section 7(AAA)and substituting a new sub-section (8) providing that if elections were not held before the expiry of the term specified in sub-section 7 (A) or the extended term under Section 7-AA, all the members of the Committee shall be deemed to have vacated their seats and the powers of the Committee shall be deemed to have been vested in the Registrar and the Registrar shall hold elections as early as possible. The Ordinance was subsequently replaced by Chhattisgarh Co-operative Societies (Amendment) Act 2004 (hereinafter referred to as the Amendment Act). Constitutional validity of this Ordinance as also the amendment Act is under challenge in these writ petitions. All these petitions have been heard together and are being decided by this common order.

3. The State of Chhattisgarh was carved out of the State of Madhya Pradesh under the M.P. Reorganization Act, 2000 on 01.11.2000.

4. It is apt to delineate the relevant provisions of Section 49 of the Act, as it stood, before and after the AMENDING ACT.

Section 49 of the Act, as it stood before the Amending Act:

[(7-A)(i) The term of the committee shall be five years from the date on which first meeting of the committee is held:

Provided that where a committee superseded, suspended or removed under the Act is reinstated as a result of any order of any court or authority, the period during which the committee remained under supersession, suspension out of office as the case may be, shall be excluded in computing the period of the term aforesaid.

(ii) The term of the representative elected by the committee of the society shall be co-terminus with the term of the committee of the society for which representative is elected:

Provided that the representative of a committee shall continue to hold his office till the expiry of the term of the committee of which he is a member.

[(7-AA) The State Government may, by notification, for reasons to be stated therein, extend the term of the committee of a society or a class of societies from time to time, for a total period not exceeding thirty six months.

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[(7-AAA) Notwithstanding the expiry of the maximum period of eighteen months specified in sub-section (7-AA), in respect of the committees between the period commencing on the 7th May, 1988 (hereinafter referred to as the said date) and ending on the date of publication of the Chhattisgarh Co-operative Societies (Amendment) Ordinance, 1988, in Gazette the period in respect of such Committees shall be deemed to have been extended for a period of six months with effect from the said date as if the notification for the extension of the period were issued under sub-section (7-AA) on the said date.]

[xxx]

[(8)(i) It shall be obligatory on the outgoing committee of the society to hold elections prior to the expiration of the term under sub-section (7-A) or extended term under sub-section (7-AA). The outgoing committee shall apply to the Registrar for holding election within a reasonable time which shall not be in any case less than ninety days before expiration of the term of the committee:

Provided that if the outgoing committee has resolved and requested the Registrar to hold election at least ninety days in advance and the Registrar has failed to conduct elections on its request, the Registrar shall not assume charge of the committee and the members of the committee shall continue to hold the offices:

Provided further, that if the Registrar fails to conduct elections of the committee within ninety days from the date of expiry of the term of the committee, the

committee of the society shall appoint returning officer who shall conduct the election of the committee within 180 days from the date of the expiry of the term.

(ii) If the committee fails to hold election and has not handed over the charge on expiration of the term, under sub-section (7-A) or extended term under sub-section (7-AA) to the Registrar or any officer authorized by him on his behalf, all the members of the committee shall be deemed to have vacated their seats and the Registrar shall assume charge and hold election as early as possible.

Statement of Object and reasons for the Amendment to Section 49 by The Chhattisgarh Co-operative Societies (Amendment) Act, 2004

Statement of objects and Reasons:

The State Government has decided that the terms of Committee of societies which has been extended from Twelve months to Thirty six months by amendment of Co-operative society Act, 1960 (No.17 of 1961) *which effected the democratic pattern of Societies* (emphasis supplied). To keep in a view to the Public interest to amend in the said Act.

(1) Hence, this Bill

THE CHHATTISGARH CO-OPERATIVE SOCIETIES (AMENDMENT) ACT, 2004 No. 22 of 2004:

[Received the assent of the Governor on the 10th January, 2005; assent first published in the Chhattisgarh Rajpatra (Asadaran) dated 14th January, 2005.]

An Act further to amend the Chhattisgarh Co-operative Societies Act, 1960.

Be it enacted by the Chhattisgarh Legislature in the Fifty-fifth Year of the Republic of India as follows :--

1. **Short title and commencement.**—(1) This Act may be called the Co-operative Societies (Amendment) Act, 2004.

(2) It shall come into force from the date of its publication in the Official Gazette.

2. **Amendment of Section 49.**---In Section 49 of the Chhattisgarh Co-operative Societies Act, 1960 (No.17 of 1961) (hereinafter referred to as the principal Act):--

(1) Sub-section (7AA) and (7AAA) shall be omitted.

(2) Sub-section (8) (i) and (ii) the following shall be substituted.

"(8) If the elections are not held before the expiry of the term specified in sub-section (7A) or the extended term under deleted herein before sub-section (7AA), all the members of the committee shall be deemed to have vacated their seats and the powers of the committee shall be deemed to have been vested in the Registrar and the Registrar shall hold elections as early as possible:

Provided that the Registrar may authorize any officer to exercise the powers of the committee vested in him under this sub-section and the officer

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so authorized shall exercise such powers from the date of such authorization."

5. These petitions were earlier heard by a Division Bench of this High Court. On 14.02.2006, the following order was passed:

"In the course of arguments, both Shri Kanak Tiwari and Shri Manindra Shrivastava, learned Senior Counsel appearing for the petitioners submitted that the issue that arises for decision-making in this batch of the writ petitions is squarely covered by a judgment of the Division Bench of the Madhya Pradesh High Court in the case of ***Anurudh Prasad Shahstri and another Vs. State of Madhya Pradesh and others*** *1993 (2) MPJR 33 and that judgment binds a co-ordinate Bench of this High Court, being a successor High Court. Leaving the above question raised by the learned Senior Counsel open to be decided in an appropriate case, we think it appropriate to place this batch of writ petitions before a Larger Bench to attain finality as regards this Court on the Constitutional question that arises for decision. We, therefore, direct the Registry to place these writ petitions before the Hon'ble the Chief Justice to constitute appropriate Larger Bench to hear and dispose of these writ petitions finally. The petitioners/respondents are granted a week's time to file 3rd Judge's set of papers."*

In this manner a Full Bench was constituted by the Chief Justice which heard these petitions.

6. The challenge to the impugned amendment in Section 49 of the Act in all these petitions is based on the following grounds:

a) that after the formation of the State of Chhattisgarh on 01.11.2000 under the M.P. Reorganisation Act 2000, the Chhattisgarh State Legislature lacked competence to re-enact a law which had been struck down as *ultra vires* by the High Court of Madhya Pradesh in **Anurudh Prasad Shastri State of M.P. 1993 (2) M.P.J.R. 33**[1] without curing the defects therein.

b) that the impugned amendment takes away the existing right of the management committee to be in the management of the co-operative societies and, is therefore, arbitrary and unconstitutional.

c) That the impugned amendment gives unbridled power to the Registrar to be in control of the management of co-operative societies for an unlimited period and is thus subversive of the democratic structure of the co-operative societies and the preamble of the Chhattisgarh Co-operative Societies Act, 1960.

d) that the impugned amendment frustrates the object of the Act to develop co-operatives as democratic institutions.

7. Learned counsel for the petitioners placed heavy reliance on **Anurudh Prasad Shastri v. State of M.P. 1993 (2) M.P.J.R. 33** contending that a decision rendered by a Division Bench of the parent State of Madhya Pradesh prior to the Reorganisation of the State

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1. **1993 (2) M.P.J.R. 33**

binds a co-ordinate Bench of this High Court and the State Legislature also. The Chhattisgarh State Legislature being aware that the judgment rendered in **Anurudh Prasad Shahstri** (supra 1) whereby the amended Section 49 (8) of the Act was held unconstitutional and derogatory of the democratic set-up of the Co-operative Societies and subvertive of the democratic process of ensuring healthy and democratic culture by holding elections, had, to scuttle the effect of the decision rendered in **Anurudh Prasad Shastri** (supra 1) again amended Section 49 (8) of the Act verbatim which could not be termed as a validating legislation and was liable to be struck down as *ultra vires*.

8. As against this, the learned Advocate General argued in support of the impugned amendment and took us in details through the various provisions, bye-laws and schemes, as reflected under the Chhattisgarh Co-operative Societies Act and the rules made thereunder and did not dispute that the appointment of returning officer under the second proviso to Section 49 (8-i) was eventually to be done by the Registrar. The learned Advocate General also contended that the judgment rendered in **Anurudh Prasad Shastri** (supra 1) was *per incurium* since the various rules and regulations and bye-laws governing the management of the society and the elections thereof were neither referred to nor brought to the notice of the High Court of Madhya Pradesh. On these premises, it was urged that the Legislature of the State of Chhattisgarh had the competence to amend Section 49 of the Act even though the amendment was verbatim to the amendment to Section 49 of the Act which had been struck down by the High Court of Madhya Pradesh in **Anurudh Prasad Shastri** (supra 1).

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9. It was also contended that the elections to the Committee of the Petitioner-societies depended upon the elections of representative from various primary agriculture cooperative societies who are members of the petitioner-society. There were other representatives from other societies who were also members of the Committee of the petitioner-societies, therefore unless the elections of primary agriculture co-operative societies were conducted by the said societies the Registrar was not in a position to conduct election of the Committee of the petitioner-societies. The manner, methodology, the system and the procedure for elections of societies from Apex Society to District Level Societies or the Primary Level Societies were so complex, inter-dependant and complicated that it became difficult to initiate and complete the election process within the statutory period, and therefore, the impugned amending provisions have been brought to facilitate the completion of election of all the societies whether Primary, Central or Apex Level Society so that their term is not extended beyond the statutory period and elections were held within time. It was argued that while cutting short the complicated procedure provided in section 49, the Government had also robbed itself of the power under Section (7-AA) and Section (7-AAA) of the Act. During the course of arguments, it was not disputed that the Ordinance to amend Section 49 was promulgated on a date when the term of the management committees as envisaged under the second proviso to Section 49 (8-i) of the Act had not expired.

<u>NATURE OF THE CO-OPERATIVE SET UP IN THE STATE OF CHHATTISGARH</u>

10. Section 2(*a-i*) of the Chhattisgarh Cooperative Societies Act, 1960 (Act 17 of 1961) defines "Apex Society" to mean a society whose principal object is to provide facilities for the operation of other societies affiliated to it and whose area of operation extends to the whole State of Madhya Pradesh. Section 2(*c-i*) defines "Central Society" to mean a District Cooperative Agriculture and Rural Development Bank or any other society whose area of operation is confined to a part of the State and which has as its object the promotion of the member societies and which has at least five societies as its members. Section 2(*c-ii*) defines "Central Cooperative Bank" to mean a resource society registered or deemed to be registered under this Act which is either licensed under the Banking Regulation Act, 1949 (10 of 1949) or permitted by the Reserve Bank of India to do banking business till so licensed, and (i) has area of operation confined to part of the State; and (ii) has as its principal object, the creation of funds and the obtaining credit, goods or services for and providing credit, goods or services as loan to Co-operative Societies affiliated to it for agriculture, industrial and other allied purposes. Section 2(*d*) defines "committee" to mean the Board of a management by whatever name called constituted under Section 48. Section 2(*j*) defines "Farming Society" to mean a society formed with the object of promoting development of land and better methods of cultivation, and includes a better farming society, tenant farming society, collective farming society, joint farming society, irrigation society and a crop protection society. Section 2(*r*) defines "member" to mean a person joining in the application for the registration of a society or a person admitted to membership after registration in accordance with this Act, the rules and the bye-laws

applicable to such society and includes the State Government when it subscribes to the share capital of a society. Section 2(*t-i*) defines "Officer" to mean a person elected or appointed by a society according to its bye-laws to any office of such society and includes a Chairman, Vice-Chairman, President, Vice-President, Managing Director, Manager, Secretary, Treasurer and Member of the committee and any other person elected or appointed under this Act, the rules or the bye-laws to give directions in regard to the business of such society. Section 2(*u-i*) defines "Primary Society" to mean a society which is neither an Apex Society nor a Central Society. Section 2(*x-i*) defines "Representative" to mean a member of the society to represent the society in other societies. Section 2 (*y*-i) defines Returning Officer to mean an Officer appointed by the Registrar by general or special order for performing the duties of a Returning Officer under this Act or the rules made thereunder and includes an officer subordinate to the Returning Officer nominated in writing by him to perform the duties of Returning Officer. Section 2 (z) defines Society to mean a co-operative society registered or deemed to be registered under this Act. Section 2(*z-i*)(*aa*) defines "State Cooperative Bank" to mean the Madhya Pradesh State Cooperative Bank, Limited.

11. Section 4 of the Act obligates the registration of a society and envisages that subject to the provisions of this Act, a society which has as its objects the promotion of the economic interest of its members or their general welfare in accordance with cooperative principles or a society established with the object of facilitating the operations of such a society, may be registered under this Act. The registration has been envisaged under Section 9 and the societies

have been classified into 12 categories in sub-section (1) of Section 10, the details of which are not material here. Sub-section (1-*a*) of Section 10 further empowers the Registrar to classify the societies enumerated in clauses (*i*) to (*xii*) of sub-section (1-*a*) which under three heads, namely: (*a*) Apex Society; (*b*) Central Society; and (*c*) Primary Society. In Chapter II right to membership has been conferred by Section 19 envisaging in sub-section (1) thereof that no person shall be admitted as a member of a society except the enumerated categories, namely: (*a*) an individual; (*b*) any other society; (*c*) to (*e*) are omitted as being not relevant here and (*f*) the State Government. Under sub-section (2), notwithstanding anything to the contrary contained in this Act or rules or in the bye-laws of a society, where the State Government has contributed to the share capital of a society, the liability of the State Government shall be limited to the face value of the shares held by it.

12. Section 22 gives right to vote. Sub-section (1) says that every member of the society shall have one vote in the affairs of the society. The other details in sub-sections (2) to (8) are not material for the purpose of this case, hence omitted. Section 23 prescribes the manner of exercising vote. Sub-section (1) thereof postulates that every member of a society shall exercise his vote in person and no member shall be permitted to vote by proxy. Provided that subject to any rules made under this Act — (*i*)(*a*) a society which is a member of another society may appoint one of its members as a representative to vote on its behalf; and (*b*) not necessary for the purpose of this case. Section 23(*ii*) says that the State Government may nominate one of its officers as its representative, to vote or otherwise participate in its behalf in the affairs of the society of

which such society or the State Government is a member. Other details are not necessary for the purpose of this case, hence omitted. Section 47-A prescribes the functions of the Apex Society. Sub-section (1) thereof says that the Apex Society may, for servicing its constituents and in accordance with its bye-laws, perform the functions enumerated therein. Sub-section 1(*k*) enjoins the function to ensure timely conduct of elections in member societies.

13. Chapter V deals with "Management of Societies" and sub-section (1) of Section 48 says that the final authority in a society shall vest in the general body of members. The proviso is not relevant, hence omitted. Sub-section (2) of Section 48 says that subject to sub-section (1), the management of every society shall vest in a committee constituted in accordance with this Act or rules made thereunder or bye-laws of the society and it shall exercise such powers and perform such duties as may be conferred or imposed respectively by the Act or rules made thereunder or bye-laws of the society. Sub-section 3 (c) enjoins that in the event of society falling to elect requisite number of members or to elect less than such number of members, as is specified in clauses (a) and (b), the members of the committee shall co-opt the requisite number of members from amongst members of such society eligible for such representation and in the event of the Committee failing to do so Registrar shall nominate the requisite number of members from amongst members of such society eligible for such representation. Sub-section (5) of Section 48 provides that there shall be a President/Chairman and two Vice-Presidents/Vice Chairman in a resource society. The details of representation of the Vice-Chairman are not relevant for the purpose of this case, hence omitted.

14. Sub-section (1) says that every committee of society shall at the time of election of Chairman or Vice-Chairman, also elect a representative who shall represent it in other society and the representative so elected shall not be withdrawn by the committee till the next election of the committee. It thus gives power to the Sub-sections (2) and (3) are not relevant for the purpose of this case, hence omitted. Section 48-C provides powers of the committee as under:

The Board or the committee of a society shall in accordance with the bye-laws, have power to — (*a*) admit and terminate membership; (*b*) elect the Chairman and other office-bearers; clauses (*c*) to (*h*) are not relevant for the purpose of this case, hence omitted

15. Section 7-A(*i*) of Section 49 provides that the term of the committee shall be five years from the date on which first meeting of the committee is held. Section 7-A(*ii*) provides that the term of the representative elected by the committee of the society shall be coterminous with the term of the committee of the society for which the representative is elected. The other details are not material for the purpose of this case, hence omitted.

16. The survey of the aforesaid provisions of the Act provides for formation and registration of the Cooperative Society. The membership of the society, the general body, the committees to manage the affairs of the society, their tenure and qualifications have been provided for and the management of the society shall vest with the committee and the committee is empowered to elect the officers,

namely, the President, two Vice-Presidents etc. etc. and the representatives to represent its membership in other societies. However, *it is pertinent to note that the Cooperative set-up in the State of Chhattisgarh. is three-tier set-up i.e. Primary Society at the village level, Central Society at the district level and Apex Society at the State level. The representatives elected by the Primary Society from the electoral college for the Central Societies along with some other representatives and the representatives elected by the Central Societies from electoral college for Apex Societies. Thus, in view of the aforesaid set-up until and unless the elections of representatives at the Primary Society level are not complete the electoral college for the Central Societies is not complete and therefore elections of the Central Society level can only be held after the elections for representatives of the Primary Society which are complete. Similar is the position as regards the Apex Society i.e. elections in Apex Society cannot take place until and unless the elections of representatives at the Central Society level are not complete, and the electoral college so formed is not complete.* (emphasis supplied).

17. It is proper to quote here paragraph 16, 17, 18 & 19 from the judgment rendered by the Apex Court in **Rajendra Prasad Yadav v. State of M.P. & another**[2].

> *"16. There is no doubt that in our democratic polity, all democratic institutions including the Cooperative Societies governed by the provisions of the Act are required to be organized on the principles of democratic governance. In fact, Part IX of the Constitution, brought by the Constitution (Sixty-*

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2. (1997) 7 SCC 678

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third Amendment) Act, 1992, provides for the panchayat system within the democratic governance by requiring holding of periodical elections right from the bottom-most democratic set- up of the village panchayat up to the District Boards. The elections, therefore, to the Cooperative Societies are also required to be conducted periodically before the expiry of the term of the Managing Committee of the societies so that the elected body would remain in office and organise the management of the society and disburse loans to the agriculturists for their economic and social empowerment and to augment their economic resources for self-sufficiency and to give a boost to the national productivity in agricultural produce. The conduct of the periodical elections is required to be organised in accordance with the provisions of the Act, rules and bye-laws of each society."

17. The question, therefore, is: Whether the Registrar was justified under Section 49(8)(ii) of the Act to assume charge of the Apex Bank? Section 2 (d) of the Act defines "committee" to mean the Board of management, by whatever name called, constituted under Section 48. The "Registrar" defined under Section 2 (x) of the Act shall be the Registrar of Cooperative Societies and under Section 3, the State Government is empowered to appoint a person to be the Registrar and may appoint one or more officers of the enumerated categories to assist him, for the performance of all the functions and duties under the Act. Section 48 in Chapter V deals with management of the societies. It provides that the final authority in a society shall vest in the general body of the

members. The management of every society, by operation of sub-section (2), shall vest in a committee constituted in accordance with the Act or rules made thereunder or bye-laws of the society. It shall exercise such powers and perform such duties as may be conferred or imposed respectively by the Act or rules made thereunder or by bye-laws of the society. Sub-section (1) of Section 48-B posits that "every committee of society shall, at the time of election of Chairman or Vice-Chairman, also elect representative who shall represent it in other societies and the representative so elected shall not be withdrawn by the committee till the next election of the committee". (emphasis supplied) Section 48-C prescribes the powers of the committee and under clause (b) thereof, the Board of the committee of a society shall, in accordance with the bye-laws, have power to elect the Chairman and other office-bearers. Sub-section (1) of Section 49 envisages "Annual General Meeting" and provides that every society shall, within a period of twelve months from the date of last annual general meeting, call a general meeting of its members for the purposes specified in clauses (a) to (f) of sub-section (1) thereof. Section 49(b) says that the purpose of annual general meeting is "election, if fallen due of the members of the committee". Explanation to Section 49(1)(b) envisages that "election of the committee shall be deemed to have fallen due, if the term of the committee comes to an end within a period of three months from the date of the annual general meeting". Sub-section (6) of Section 49 envisages that "(I)f the bye-laws of the Society provide for election of all or some members of the committee on territorial basis under sub-section (7)

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thereof, such members of the committee shall be elected from the area in a meeting of the members of that area in accordance with the provisions of the bye-laws on a date prior to that general meeting". Sub-section (7-A) provides that "the term of the committee shall be five years from the date on which first meeting of the committee is held". The proviso is not relevant; hence omitted. Clause (ii) of sub-section (7-A) envisages that "the term of the representative elected by the committee of the society shall be coterminous with the term of the committee of the society for which representative is elected". However, the proviso thereto provides that "the representative of a committee shall continue to hold his office till the expiry of the term of the committee of which he is a member". (emphasis supplied) Sub-section (7-AA) of Section 49 provides that the State Government may, by notification, for reasons to be stated therein, extend the term of the committee of a society or a class of societies from time to time for a total period not exceeding twelve months. Sub-section (7-AAA) of Section 49 envisages that

> *"notwithstanding the expiry of the maximum period of eighteen months specified in sub-section (7-AA), in respect of the committees between the period commencing on the 7th May, 1988 (hereinafter referred to as the said date) and ending on the date of publication of the Chhattisgarh Cooperative Societies (Amendment) Act, 2004 in the Gazette the period in respect of such committees shall be deemed to have been extended for a period of six months with effect from the said date as if the notification for the extension of the period were issued under sub-section (7-AA) on the said date".*

Sub-section (8) has already been extracted and needs no repetition.

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18. A conjoint reading of the above-referred provisions would manifest the legislative intention that it shall be obligatory on the outgoing committee of the society to hold elections prior to the expiry of the term under sub-section (7-A) or before the expiry of the extended time under sub-section (7-AA). The outgoing committee shall apply to the Registrar to hold elections within a reasonable time "which shall not be in any case less than ninety days before the expiry of the term of the committee". (emphasis supplied) *Thus, it could be seen that it is the duty of the outgoing Managing Committee of the society to have its elections held prior to the expiration of the term of the committee not less than ninety days before the expiry of the term of the committee.*

19. Under the first proviso, if the outgoing committee had resolved and requested the Registrar to hold elections and the Registrar had failed to conduct elections on its request, there is a legislative injunction issued against the Registrar that "he shall not assume charge of the committee and the members of the committee shall continue to hold the office". Under the second proviso, if the Registrar fails to conduct elections of the committee within ninety days from the date of the expiry of the term of the committee, the committee of the society shall appoint returning officer who shall conduct the election of the committee within 180 days from the date of expiry of the term. The combined operation of sub-section (8)(i) and the second proviso is that though the members of the committee are entitled, by operation of the

first proviso, to continue to hold the office, it is equally obligatory on the part of the committee that, if the Registrar fails to conduct elections as envisaged hereinbefore, the returning officer should be appointed whose duty shall be to conduct elections of the committee within 180 days before the date of the expiry of the term. By operation of sub-section (8)(ii) if the members of the committee having continued to hold office by operation of the first proviso to sub-section (8)(i), fails to appoint a returning officer under the second proviso and, if the committee thereby, commits default to hold elections and does not hand over the charge, on expiry of the term under sub-section (7-A) or extended term under sub-section (7-AA) to the Registrar or any officer authorised by him on his behalf, they all shall be deemed to have vacated their seats and the Registrar shall assume charge and hold elections as early as possible. Thus the combined reading of the sections envisages that elections to the Managing Committee shall be held by the Registrar, at the request by the committee, before expiry of the term of the outgoing committee within the time-schedule prescribed therein. If the Registrar fails to perform the said duty, the Managing Committee, while remaining in office, is enjoined to have the elections conducted within 180 days or at least not less than 90 days before the expiry of the term of the Managing Committee. But if the committee commits default in conducting the elections, the members of the committee are deemed to have vacated their seats. Thereby, by statutory operation, no Managing Committee remains in office. The Registrar, therefore, should assume charge of the society. On

assumption thereof, while conducting the business of the society simultaneously he should hold elections as expeditiously as possible so that the Managing Committee elected on democratic principle immediately assumes office and conducts the business of the society in the manner laid down under the Act, Rules and the bye-laws of the society and achieves the object of the society and realises the collective aspiration of the members of the society". (emphasis supplied).

18. The learned counsel for the petitioners in all these petitions have placed explicit reliance on a judgment rendenred by a Division Bench of the High Court of Madhya Pradesh in **Anurudh Prasad Shastri** (supra 1) and **Rajendra Prasad Yadav** (supra2) wherein the judgment in **Anurudh Prasad** (supra 1) was relied on. In **Anurudh Prsasad Shastri's** case, where the constitutional validity of a verbatim similar amended Section 49 (8) of the Act, as is under challenge in these petitions, was under challenge, the Division Bench held as under:

*"11. The co-operative movement, as noticed earlier, is an effective democratic instrument of curtailing exploitation and socio-economic development. In B.K.Garad v. Nasik Marchants Co-op. Bank Ltd. **AIR 1984 SC 192**, the Supreme Court observed that co-operative movement was necessary for giving shape to a secular sovereign democratic republic that India is destined to be. According to the Supreme Court, a republic is made of 'men and institutions', and co-operative societies are such institutions. Under the circumstances, there should be no difficulty in holding that the objective of*

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the co-operative movement is to make the democratic process enshrined in the Constitution little more effective. In spite of it, a co-operative society is not meant to be run as a close preserve of an individual or a group of a persons, as would be clear from the decision of Supreme Court in Bhandara Dist. Central Co-op. Bank Ltd. V. State of Maharashtra ***AIR 1993 SC 59*** *"Co-operative" has been understood as a form of organization, where persons voluntarily associate together on the basis of equality for the promotion of their economic interests, by democratic means and methodology. The emphasis is on 'co-operation'. It is, therefore, necessary to have active participation of as many members as possible. It should, therefore, be clear that if the impugned amendment has the effect of avoiding management monopoly of any individual or group of persons, the same would not be unreasonable or unjust. Speaking conversely, if the amendment has the effect of unreasonably denying the opportunity to elected members of managing the affairs of the society, the same would also be subversive of democratic process. Can it then be said that the impugned amendment had become necessary because the elected members were trying to maintain their monopoly over the society and not permitting the democratic process to go on? In the context of things, it is difficult to answer the question in the affirmative. Under the law, as it existed before the amendment, there was adequate provision to not only debar such a defaulting committee, but also punish members for their default. The earlier provision, therefore, did not permit creation of any vested interest or running the society as a*

close preserve of the members of the managing committee. If the managing committee did not pass the resolution for holding fresh election, it was considered to be a defaulter and Registrar then got jurisdiction under sub-section under sub-section (5) to take action against such a committee and members. There was, therefore, no possibility of any monopoly of management being created. It is however submitted that though an elected member may have a right to continue upto the expiry of his term, he cannot claim such a right after the expiry of the term. In other words, the submission of the respondent-State is that the elected members cannot claim to continue in the managing committee after the expiry of the terms of the committee. This Court finds no difficulty in accepting the submission that a committee cannot claim to continue for any period longer than its prescribed term. This, however, is not the question to be considered in the present case. If a committee by giving any indication of its intention to continue beyond its prescribed term, there might be justification for action against it. It is not the petitioners' claim even nor is there an allegation by the respondents that the petitioner societies had shown any tendency to continue after the expiry of their term. Indeed the factual situation is that the petitioner societies had passed resolution and requested the respondent Registrar to appoint the Returning Officer for holding new elections. In a situation like this, the real question is whether the Registrar by not performing his obligations under the Act and not holding election before the expiry of the term of the existing committee, can be permitted to be benefited by his own

default. If the matter is considered in the context of default of the Registrar of the Returning Officer appointed by him, and the decision is required to be taken in the context of democratic destiny and the rights of the members to manage the society, the provision would appear, prima facie, unreasonable and arbitrary. Such a situation was considered by Andhra Pradesh High Court in M. Ranga Reddy v. State of Andhra Pradesh and others ***AIR 1989 A.P. 81,*** *and it was held that if a committee has done all that it was required to do under law to ensure election of a new body before the expiry of the term, it cannot be held guilty of any dereliction of duty and it cannot be said that such a law abiding body suffers from any handicap in continuing to be in position of management till elections are held* (emphasis supplied by us). *The aforesaid conclusion was arrived at in the context of default of the Registrar, who was incharge of holding elections and failed to perform his duties. Under the circumstances the aforesaid judgment supports the reasoning that between an obedient, law abiding and duly elected managing committee whose term has expired and a defaulting and law violating Registrar, it is more reasonable to continue the society to function till now elections are held. That such a course is not unconstitutional is also apparent from the fact that the law before the amendment provided for such a situation. If the earlier arrangement was constitutionally valid and otherwise just and proper, it is possible to hold that it has been substituted by an unjust and unfair provision. There is no reasonable nexus between the provision and the object sought to be achieved by it. The object, as is clear*

from the statement of objects and reasons, is to promote democratic functioning of the society, which only be done by holding fresh election. Instead of ensuring the aforesaid object, which may have required enacting a provision compelling the Registrar to act within the time frame and hold election before the expiry of term, the impugned amendment puts a premium on his defaults and gives him the right to take over the management of the society by committing default. The provision is prima-facie arbitrary.

12. Apparently, the object of the legislature is bound to be subverted by the present amendment. Possibility of its flagrant misuse in the context of current political situation is also real. The Registrar, being an officer working under the Government headed by a particular political party, the possibility of that political party controlling societies through the Registrar, cannot be ruled out. Apparently, therefore, the potency of the provision is more for creating mischief and subverting democratic process than for ensuring healthy democratic culture by holding elections. Such a provision must be held to be arbitrary and violative of Article 14 and it is accordingly held so." (emphasis supplied)

19. In **State of T.N. & others v. Ananthi Ammal & others**[3], it was held as under by the Apex Court :-

"7. When a statute is impugned under Article 14 what the court has to decide is whether the statute is so arbitrary or

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3. (1995) 1 SCC 519

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unreasonable that it must be struck down. At best, a statute upon a similar subject which derives its authority from another source can be referred to, if its provisions have been held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context.

20. I shall now proceed to examine the impugned provisions incorporated in Section 49 of the Act. The preamble of Chhattisgarh Co-operative Societies Act reads as under:

> "An act to organize and develop co-operatives as instruments and people's institutions based on self help, and mutual aid, and for curbing exploitation and ensuring socio-economic development of people with particular emphasis on weaker sections society."

21. The statement of objects and reasons for incorporating the impugned amendment to Section 49 have been referred to above and shows that the State Government felt that the extension of the term of the committee of societies from 12 months to 36 months by amendment to sub-section (7-AA) to Section 49 of the Act effected the democratic pattern of societies, and therefore, keeping in mind the public interest the impugned amendment was incorporated whereby sub-section (7-AA) and sub-section (7-AAA) were omitted and a new sub-section (8) was substituted in place of sub-section (8) (i) and (ii) which have also been referred above. As stated earlier, under sub-section (8) (i), as it stood prior to the amendment, it was obligatory on the outgoing committee of the society to hold elections prior to the expiration of the term under sub-section (7-A) i.e. five years or extended term under sub-section (7-AA) i.e. 36 months. For

this purpose, the outgoing committee was under an obligation to apply to the Registrar for holding elections atleast 90 days prior to the expiration of the term of the committee. If this was done, it would manifest the intention of the outgoing committee to hold elections, which was consistent with the democratic set up of the co-operative societies constituted under the Act, so that the newly elected committee of the society could take over. Under the first proviso to sub-section (8)(i) of the Act, once the outgoing committee resolved and requested the Registrar atleast 90 days before expiration of its term, a legislative injunction was imposed upon the Registrar not to assume charge of the committee and members of the committee would continue to hold office. But this was not to be in infinito. The second proviso obligated the Registrar to conduct the elections within 90 days from the date of expiry of the term of the committee. If this was not done, the Managing Committee again could not benefit by the default of the Registrar and continue to hold the office infinito. The mandate of the second proviso to sub-section (8)(i) of the Act was that if the Registrar failed to conduct elections within a period of 90 days from the date of the expiry of the term of the committee, the committee of the society was under a legal obligation to appoint Returning Officer for conducting the election of the committee within 180 days from the date of the expiry of the term. Sub-clause (ii) of sub-section (8) clearly mandated that if the committee failed to hold elections and to handover the charge on expiration of the term under sub-section (7-A) i.e. five years or extended term under sub-section (7-AA) i.e. 36 months, all the members of the committee shall be deemed to have vacated their seats and the Registrar would assume charge and hold elections thereafter as early as possible. In this manner, sub-section (8)(i), as it stood prior to the impugned

amendment, provided for checks and balances and did not put any premium on the default either by the committee or by the Registrar. If sub-section (8) of the Act was read with sub-section [7-A(i)], sub-section (7-AA) and sub-section (7-AAA), it was crystal clear that before the expiry of the period stipulated in sub-section [7-A(i)] or the extended period mentioned in sub-section (7-AA) if the committee resolved and applied to the Registrar for holding elections within a reasonable time i.e. atleast 90 days before expiry of its term, the legislative injunction imposed against the Registrar to assume charge of the committee would become operative till 90 days after the expiry of the term of the committee but not later than that since thereafter the committee of the society was under an obligation to appoint Returning Officer for conductions elections of the committee within a period of 180 days from the date of expiry of the term. The effect of the deletion of sub-section (7-AA) and sub-section (7-AAA) and substitution of sub-section (8)(i) of the amended sub-section (8) is that immediately after expiry of the term of the committee, the Registrar would automatically take over the management of the committee and thereafter no period is prescribed for holding elections meaning thereby that the Registrar could allow the election process to be thwarted and remain in office for an indefinite period. In this manner, a premium was to be put on the default of the Registrar in holding elections. It is thus clear that impugned amendment has the effect of unreasonably denying the opportunity to elected members of the management committee to continue with the affairs of the society under the second proviso to Section 49 (8) of the Act. The impugned amendment is thus subvertive of the democratic structure of the co-operative societies and derogatory of the preamble of the Chhattisgarh Co-operative Societies Act.

22. The statement of objects and reasons for bringing in the amendment to Section 49 of the Act is thus conversely true since the amendment is subvertive of the democratic pattern of societies envisaged by the framers of the Act. The very fact that the amendment was incorporated by the State Legislature even before the expiry of the period of 180 days during which the management committee of the society was under an obligation to appoint Returning Officer to conduct election of the committee clearly goes to show that the impugned amendment puts a premium on the default of the Registrar or the Returning Officer appointed by him and throws the elected management committees out of their office even before the expiry of the period of 180 days during which they were obligated to conduct election of the committee. It gives unbridled power to the Registrar to sit in the saddle of Management Committee for a period not limited by the statute. Thus, there is no reasonable nexus between the impugned amendment and the object sought to be achieved by it. The object, as is clear from the statement of objects and reasons, is to promote democratic function of the society, which can only be done by holding fresh elections. Instead of ensuring the aforesaid object which may have required enacting a provision compelling the Registrar to act within a time frame and to hold elections before the expiry of the term, the impugned amendment puts a premium on the default by the Registrar and gives him the right to take over and be in the management of the society by committing default. The provision is thus *prima facie* arbitrary and subversive of the democratic process. The Registrar being an officer working under the Government headed by a particular political party, the possibility of that political party controlling societies through the

Registrar cannot be ruled out. Apparently, therefore, the potency of the provision is more for creating mischief and subverting the democratic process than for ensuring healthy democratic culture by holding elections. Such a provision is, *per se*, arbitrary and violative of Article 14 of the Constitution of India and it is accordingly held so.

23. It is also well settled by a catena of decisions of the Apex Court that the existing rights created by a statute in favour of a group of persons or a society could not be taken away by an amendment. That being so, under the existing law i.e. under Section 49 (8) of the Act, as it stood prior to the impugned amendment, upon failure of the Registrar to hold elections within 90 days from the date of expiry of the term of the Committee, the Committee of the Society had an existing right to continue with the management of the committee and was under an obligation to appoint a Returning Officer for conducting the elections of the Committee within 180 days from the date of the expiry of the term. In this view of the matter, under the provisions of the Chhattisgarh Co-operative Societies Act, 1960, the Managing Committee had an existing right to get the elections conducted within a period of 180 days under the provisions of the Chhattisgarh Co-operative Societies Act, 1960. The impugned amendment clearly takes away this existing right of the Management Committee and is, therefore, discriminatory and violative of the democratic principle of the co-operative society to carry on with the management of the Co-operative Societies. In law, therefore, by the impugned amendment, the existing right for conducting elections before the expiry of the period of 180 days, as mentioned in second proviso to Section 8 (i) of the Act could not be taken away.

24. The question which also arises for consideration is whether the impugned amendment can be said to be a validating legislation?

25. As laid down by the Apex Court in **State of Andhra Pradesh and others v. Mcdowell & Co. and others**[4], it is now well settled that a law laid down by the Legislature can be struck down by the Court either on the ground of lack of legislative competence or on the ground of violation of any of the fundamental rights guaranteed in part-III of the Constitution of India or of any other constitutional provision. The ground of invalidation also falls within the four corners of the aforesaid two grounds.

26. In **I. N. Saksena v. State of Madhya Pradesh & R.D.Doongaji v. State of Madhya Pradesh**[5], the distinction between legislative and judicial functions was succinctly described as below:

> "22. While, in view of this distinction between legislative and judicial functions, the legislature cannot by a bare declaration, without more, directly overrule, reverse or override a judicial decision, it may, at any time in exercise of the plenary powers conferred on it by Articles 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law on a topic within its legislative field fundamentally altering or changing with retrospective, curative or neutralizing effect the conditions on which such decision is based. As pointed out by Ray, C.J. in *Indira Nehru Gandhi v. Raj Narain*, the rendering ineffective of judgments or orders ofcompetent courts and tribunals by changing their basis by legislative enactments is a well-known pattern of all validating Acts. Such validating legislation which removes the causes for ineffectiveness or invalidity of actions or proceedings is not an encroachment on judicial power."

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4. (1996) 3 SCC 709 5. (1976) 4 SCC 750

27. In **Indian Aluminium Co. and others v. State of Kerala and others**[6], the Apex Court held as under:-

> "The validity of the Validating Act is to be judged by the following tests: (i) whether the legislature enacting the Validating Act has competence over the subject-matter; (ii) whether by validation, the legislature has removed the defect which the court had found in the previous law; (iii) whether the validating law is consistent with the provisions of Chapter III of the Constitution. If these tests are satisfied, the Act can validate the past transactions which were declared by the Court to be unconstitutional. The legislature cannot assume power of adjudicating a case by virtue of its enactment of the law without leaving it to the judiciary to decide it with reference to the law in force. The legislature also is incompetent to overrule the decision of a court without properly removing the base on which the judgment is founded.
>
> The adjudication of the rights of the parties is the essential judicial function. Legislature has to lay down the norms of conduct or rules which will govern the parties and the transactions and require the court to give effect to them. The Constitution delineated delicate balance in the exercise of the sovereign power by the legislature, executive and judiciary. In a democracy governed by rule of law, the legislature exercises the power under Articles 245and 246 and other companion articles read with the entries in the respective lists in the Seventh Schedule to make the law which includes power to amend the law. Courts in their concern and endeavour to preserve judicial power equally must be guarded to maintain the delicate balance devised by the Constitution between the three sovereign functionaries. In order that rule of law permeates to fulfill constitutional objectives of establishing an egalitarian social order, the respective sovereign functionaries need free play in their joints so that the march of social progress and order remains unimpeded. The smooth balance built with delicacy must always be maintained. In its anxiety to

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6. **(1996) 7 SCC 637**

safeguard judicial power, it is unnecessary to be overzealous and conjure up incursion into the judicial preserve invalidating the valid law competently made.

In exercising legislative power, the legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered conditions should be such that the previous decision would not have been rendered by the court, if those conditions had existed at the time of declaring the law as invalid."

28. In **M/s Ujagar Prints and others (II) v. Union of India and Others & Kwality Silk Mills Co. and another v. Union of India and others**[7], it was held by the Apex Court as under:

"A competent legislature can always validate a law which has been declared by courts to be invalid, provided the infirmities and vitiating factors noticed in the declaratory judgment are removed or cured. Such a validating and curative exercise made by the legislature - granting legislative competence - the earlier judgment becomes irrelevant and unenforceable, that cannot be called an impermissible legislative overruling of the judicial decision.

All that the legislature does is to usher in a valid law with retrospective effect in the light of which earlier judgment becomes irrelevant. Such legislative expedience of validation of laws is of particular significance and utility and is quite often applied, in taxing statutes. Courts, except under extraordinary circumstances, would be reluctant to override the legislative judgment as to the need for and wisdom of the retrospective legislation."

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7. (1989) 3 SCC 488.

29. Testing the impugned amendment on the touchstone of principles enunciated by the Apex Court in **I.N.Saksena** (supra 5), it is manifest that the impugned amendment cannot, by any stretch of imagination, be said to be a validating legislation inasmuch as it does not remove any defect which the court had found in the previous law in **Anurudh Prasad Shahstri** (supra 1) and reproduces verbatim the same amendment. The amendment is nothing but an exercise to overrule the decision of the High Court in **Anurudh Prasad Shastry** (supra 1) without properly removing the base on which the judgment is founded. Placing reliance on **Indian Aluminum Company and others** (supra 6) and **M/s Ujagar Prints and others** (supra 7), I am of the considered opinion that impugned amendment cannot be said to be a validating curative exercise made by the legislature of State of Chhattisgarh. Before the reorganization of the State of Madhya Pradesh and on formation of the State of Chhattisgarh on 01.11.2000 the judgment rendered in **Anurudh Prasad Shahstri** (supra 1) had held the field in the State of Chhattisgarh also for a number of years. In this manner, the Legislature of the State of Chhattisgarh could not introduce verbatim the same amendment to Section 49 of the Act in the manner in which it did.

30. The above situation brings to my mind what Justice Brandies of the United States Supreme Court said way back in 1928.

> "In a Government of laws, existence of the Government will be imperiled if it fails to observe the law scrupulously if the Government becomes a law-breaker, it breeds contempt for law : it invites every man to become a law unto himself; it invites anarchy..." We can do no more than repeat these words and stress their significance. If the Government itself violates the law, if it violates the orders of the Court with what grace can it ask the citizens to have respect for

law? The consequences of such violation may not be immediately apparent; the Governments may get away with such violations and may gain their short-term political objectives; but in the long term they debilitate and destroy the constitutional system, by enervating the rule of law".

31. In the result, all the above petitions succeed. The impugned amendment to Section 49 of the Chhattisgarh Co-operative Societies Act, 1960 is struck down as *ultra vires*, arbitrary and subversive of the democratic structure of the co-operatives as contemplated under the Act. As a necessary consequence, provisions in Section 49 of the Act, as it stood immediately before the impugned amendment, would continue to hold the field.

Sd/-
Dilip Raosaheb Deshmukh
Judge

14.12.2006